THE DEPARTMENT OF TRANSPORTATION'S AND THE FEDERAL AVIATION ADMINISTRATION'S POLICIES ON EXEMPTIONS FROM AIRCRAFT NOISE EMISSION REGULATIONS

(99-17)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

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DEPARTMENT OF TRANSPORTATION'S AND THE FEDERAL AVIATION ADMINISTRATION'S POLICIES ON EXEMPTIONS FROM AIRCRAFT NOISE EMISSION REGULATIONS

WEDNESDAY, MAY 22, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:25 p.m., in room 2167, Rayburn House Office Building, Hon. Norman Y. Mineta (chairman of the subcommittee) presiding.

Mr. MINETA. The subcommittee will come to order. Today we will take up the Department of Transportation's and the Federal Aviation Administration's policies on exemptions from aircraft noise emission regulations.

As a result of DOT and FAA policies, 113 noncompliant four engine aircraft have been allowed to operate beyond the January 1, 1985 deadline.

As I have stated on a number of occasions, the widespread granting of exemptions by DOT and FAA is wholly inconsistent with the congressional intent. In the Conference Report on the Aviation Safety and Noise Abatement Act of 1979, Congress gave DOT and FAA clear guidance that we expected the January 1, 1985 deadline to stick and that we expected exemptions to be granted only in highly unusual circumstances.

The exemptions which DOT and FAA have granted are not based on the type of unusual circumstances specified in our conference report. In many cases, exemptions have been granted to carriers which bought noncomplying aircraft well after the compliance deadline had been announced. Because of the closeness of the deadline, the aircraft were frequently bought at bargain basement prices.

In some cases, the aircraft were bought cheaply from other carriers which were bringing their fleets into compliance. Now, as a result of the exemptions, the noncompliant carriers are able to operate at lower costs and have an unfair advantage over the complying carriers. Clearly, this was not what Congress had in mind when we developed the standard for exemptions. The damage from the FAA and DOT exemption policies is not limited to aviation. The liberal exemption policies have much broader implications. The lack of seriousness with which DOT and FAA have treated the

noise compliance deadline will be noted when the aviation industry and other industries are required to comply with other safety and environmental standards.

These deadlines will not be met if an industry believes that the Government is not serious and that those who fail to meet the deadline will suffer no consequences.

There is also a domino effect when an industry believes that a deadline will not be enforced. Companies which are well intentioned and would like to comply will have second thoughts if they believe that their competitors may be able to get away with avoiding the expense of timely compliance.

Judging DOT's and FAA's policies in this broader context, it would be difficult to design policies more likely to create a belief that the Government is not really serious about compliance deadlines and that if you do nothing about complying until the last minute you'll get an extension and be able to operate at lower costs than your competitors.

The noise exemption policies followed by DOT and FAA punish those who took the deadlines the most seriously and reward whose who are the most cynical about whether the deadlines would be enforced. I can't think of a worse message for the Government to convey.

The 1985 deadline was announced to the domestic industry in 1976. It was affirmed by Congress in 1980 and Congress expressly warned the industry that the deadline was final and no extensions should be expected. Pursuant to congressional directive, the deadline was extended to foreign airlines in 1980.

For most of the industry, the message from FAA and the Congress was enough. Most United States and foreign airlines complied with the deadlines by retiring hundreds of noncompliant aircraft and reengining many others and the costs were enormous. Some airlines still didn't believe that the Government meant business and beginning in 1981, there were many applications to FAA for a regulatory extension of the 1985 deadline. Between November 5, 1981 and December 28, 1984, FAA denied 80 of these applications and granted two.

The message was clear. FAA would not grant exemptions unless a carrier met the five criteria established by Congress in the Conference Report on the 1979 legislation. The further message was that these criteria were narrow and were only applicable in very unusual circumstances. The same message was emphasized in speeches by high-ranking DOT officials who clearly warned the industry not to expect exemptions unless they could meet the five criteria.

For many of the carriers who had been denied exemptions, this was enough. They adjusted their flights and operations so that they would be in compliance by January 1, but a few carriers still didn't believe the Government was serious. Some of these carriers were so cynical that within a year or less of the deadline they bought noncomplying aircraft. It is these carriers who held out the longest and, in many cases, deliberately placed themselves in noncompliance on the eve of the deadline and were rewarded on December 28 when DOT and FAA suddenly decided to grant exemptions freely by reducing the five criteria to two.

This sudden and unexplained change in policy led a U.S. Court of Appeals to reverse DOT and FAA for their inconsistent decisions. In their recent decisions on remand from the court, DOT and FAA have decided to adopt new interpretations of the five criteria which will enable them to go on rewarding the carriers who were prepared to believe that the deadline would never be enforced.

I hope that in today's hearings we can focus not only on aviation noise issues, but also on some of the broader policy issues I have discussed. In the future, DOT and FAA will have many occasions to set deadlines for the airlines and others to meet safety and environmental requirements. The policies followed for the four engine-jets will make it much more difficult for other deadlines to be credible and will cause companies to think twice about being the first to comply.

I hope that in the future DOT and FAA will give more consideration to the broader consequences of their policies.

I would like to yield at this time to my very distinguished colleague from Arkansas, Mr. Hammerschmidt.

Mr. HAMMERSCHMIDT. Thank you, Mr. Chairman. As you have indicated, today's hearing will focus on aircraft noise and on DOT's policy for granting exemptions from the January 1, 1985, noise rules.

Section 91.303 of the Federal aviation regulations put aircraft operators on notice eight years ago that their noncomplying four-engine aircraft would be prohibited from operating in the United States after January 1, 1985. As that deadline began to approach last summer, DOT and FAA made clear their intention to hold firm and grant very few exemptions, in spite of the fact that retrofit kits would not be available before the January 1 deadline.

While Congress subsequently liberalized the law for granting exemptions for international service to Miami and Bangor, ME, the standards governing the issuance of exemptions for other service did not change. These standards were included in the conference report accompanying the Aviation Safety and Noise Abatement Act of 1979 and were set forth in a five-part test which was to be met by those seeking exemptions. And although some disagreed with the agency's strict interpretation of these criteria, they were applied fairly consistently to all petitioners.

But then, shortly before the ban was to take effect, FAA suddenly changed its approach by liberally granting exemptions from the noise rule. What's more, it did so without providing any explanation for its change of heart. As a result of these actions, a Federal Appeals Court vacated several FAA exemption decisions.

After that court decision, FAA issued, without notice or opportunity to comment, an exemption to one airline which set forth the policy for granting exemptions to other airlines in the future. Many have charged that this new policy effectively emasculates four of the five criteria we established in the Noise Abatement Act.

The central question to be addressed today is why the change in the approach to granting noise exemptions. There are many people who are extremely bothered by noise and many airlines that spent a great deal of money to bring their fleet into compliance, only to find their competitors still allowed to use their noncomplying aircraft. Perhaps there are valid reasons for changing the standards,

such as foreign policy considerations or the unavailability of retrofit kits, but it is incumbent upon DOT and FAA to provide the public and the aviation community with an explanation.

Mr. Chairman, I look forward to the answers to this and other important questions in our hearing today and thank all the witnesses for their time in attending.

I would ask unanimous consent that our Ranking Minority Member of the full committee, Mr. Snyder be allowed to put a statement, at this point, in the record.

Mr. MINETA. Without objection, it is so ordered.

[Mr. Snyder's statement follows:]

OPENING STATEMENT OF HON. GENE SNYDER ON HEARINGS INTO AIRCRAFT NOISE EXEMPTIONS

Mr. Chairman, Today's hearings will explore the FAA and DOT's handling of exemptions from the 4-engine noise rules as set forth in part 91, subpart E of the Federal aviation regulations. These regulations require that effective January 1, 1985, older 4-engine turbojet aircraft such as the DC-8 and 707, may not be operated in the United States unless they are either re-engined or retrofitted with a so-called hush kit.

As my colleagues are aware, the Congress in 1979 passed the Aviation Safety and Noise Abatement Act which, to some extent, modified the FAA regulations relating to 2 and 3-engine aircraft. While that legislation did not change the rules for 4-engine aircraft, the conference report accompanying the bill urged the FAA to grant exemptions to smaller carriers operating 4-engine aircraft where the carrier "is making a good faith compliance effort but needed technology is either delayed or unavailable and rigid adherence to compliance deadlines could work financial havoc and deprive the public of valuable airline service."

The Congress subsequently broadened the exemption criteria by including a provision in the fiscal year 1985 continuing resolution which made it easier for carriers to qualify for exemptions if they served either Miami, Florida, or Bangor, Maine. However, unless a carrier served either of these two points, it was required to apply for an exemption under FAA's general exemption authority pursuant to section 601 of the Federal Aviation Act.

In evaluating the many petitions filed by carriers seeking exemptions under section 601, the FAA has, on more than one occasion, changed its policy on the criteria that carriers would have to meet in order to qualify. In some cases, the agency has insisted that a carrier meet a particular requirement only to decide that another carrier did not have to meet that same requirement. In other cases, the FAA reinterpreted various requirements resulting in carriers being subjected to different standards. Because the FAA did not give any explanation for its actions, the U.S. Court of Appeals in Washington vacated its decisions in some of these cases and remanded them to the agency for further administrative proceedings.

As my colleagues are aware, I was not a proponent of the noise retrofit rule but I do think that the 1979 noise bill was, under the circumstances, a careful balancing of the many competing interests involved in this issue. Most of our airlines spent large sums of money complying with these rules and others should not be permitted to continue operating noncomplying aircraft without good reason. However, the possibility that retrofit kits might not be available on January 1, 1985, was anticipated by the conferees on the noise bill as something which might justify waiving the deadline.

Nevertheless, I think we have a right to expect that the FAA will be fair in its disposition of these requests. While some of us might prefer to see these criteria interpreted more liberally than others, it is FAA's responsibility to determine the best way to proceed and then to apply its considered judgment in an even-handed manner to all applicants. And, as the Court of Appeals stated, while an agency is free to alter its past rulings and practices, it must provide a reasonable explanation for any failure to adhere to its own precedents.

Mr. Chairman, I look forward to these hearings today so we can more fully explore the noise exemption process and the way in which the FAA and DOT have been handling this most important issue.

Mr. MINETA. Mr. Secretary, at this time Mr. Hammerschmidt and I do have a meeting in the Speaker's office. Congressman Row-

land will proceed and take your statement at this time and then we will pick up on the questioning once we come back.

Mr. ROWLAND [presiding]. Are there any other opening statements at this time?

Mr. Scocozza, we appreciate very much your being here today and you may proceed as you see fit.

TESTIMONY OF MATTHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY WARREN DEAN, ASSISTANT GENERAL COUNSEL FOR INTERNATIONAL LAW; AND NORMAN PLUMMER, DEPUTY DIRECTOR, OFFICE ENVIRONMENT AND ENERGY, FAA

Mr. SCOCOZZA. Yes, Mr. Chairman. I have a prepared statement that I will do as fast as I can so we can get to the questions and answers—the better part of the presentation this afternoon, I'm sure.

Mr. ROWLAND. Your statement will be made a part of the record, without objection.

Mr. SCOCOZZA. I appreciate the opportunity to discuss with you today the FAA's recently published policy for issuing exemptions from the noise compliance requirements of FAR 91.303. Those requirements require that all subsonic aircraft operated at U.S. airports after January 1, 1985 must meet at least stage 2 noise levels.

In your May 6 letter to the Secretary, you stated your concern that the Department's actions were inconsistent with the intent of Congress as expressed in the conference report accompanying the Aviation Safety and Noise Abatement Act of 1979. The committee asked several questions about our implementation of ASNA and our response is provided in detail in my prepared statement. I will briefly summarize the major points.

As you are aware, Mr. Chairman, all of these issues are currently the subject of litigation. This document was written, Mr. Chairman, before the litigation was concluded yesterday and it continues on with talking about how I'm not able to respond to questions. I am able to respond to any detailed questions you have respecting the litigation, and we will correct our prepared statement accordingly.

We share your concern that noise compliance deadlines be adhered to and we take seriously the Government's commitment that compliance must be achieved. We support fully the noise abatement objectives and policies contained in the ASNA. However, an overall perspective on implementation of the ASNA is important as background for our recent decisions.

The conference committee report recognized that full compliance by the established deadline might create hardship situations. In that report, Congress urged FAA to give consideration to hardship cases involving operators of four-engine aircraft if the operators met five criteria. To paraphrase the report, a hardship situation occurs where the applicant is first, a "smaller carrier"; second, is providing "valuable airline service"; third, is making "a good faith compliance effort"; fourth, has found that "needed technology is

delayed or unavailable"; and, fifth, would suffer "financial havoc" without an exemption.

The act also mandated blanket exemptions until 1988 to United States and foreign carriers providing "small community service." As the Chairman knows, this resulted in the FAA issuing over 500 exemptions, mostly to larger U.S. carriers, for operations by stage 1, two-engine aircraft—mostly older DC-9's and 737's. Everyday, these exempted aircraft take off and land many times at hundreds of U.S. airports.

After the Act was signed into law, FAA promptly amended its regulations to implement the congressional mandate. Throughout the intervening years, the Department repeatedly stressed that it would hold firm to the January 1, 1985 deadline. Early in 1984, Secretary Dole said that "few, if any" exemptions could be expected. The Federal Aviation administrator made the same statement. The Department believed that the firm enunciation of this policy would demonstrate our serious commitment to enforcing compliance. We expected that operators of noncomplying aircraft would bring those aircraft into compliance. We received and appreciated strong support from this committee during that period.

However, some petitioning carriers, some local airport authorities, and other interests then turned to Congress for relief. Despite the Department's violent opposition, Congress passed the Hawkins/Chiles amendment, which went into effect on October 12, 1984.

For carriers covered by it, Hawkins/Chiles waived all criteria in the 1979 report except for "good faith compliance." The amendment defined good faith compliance as being satisfied by a carrier's firm contractual commitment, accompanied by a substantial deposit, to retrofit noncomplying aircraft with so-called hush kits or to replace those aircraft with planes meeting the standard.

In the weeks immediately following enactment of Hawkins/Chiles, FAA granted exemptions to 25 carriers operating 55 noncomplying aircraft into Miami and Bangor.

After Hawkins/Chiles was passed, FAA continued to deny other exemptions based on a strict interpretation of each conference report criterion. By the end of November, only two general exemptions had been issued, one to Icelandair and the other to Caribbean Air Cargo.

However, the nature of the petitions for those general exemptions changed after Hawkins/Chiles. Before Hawkins/Chiles, many petitioners apparently believed Congress would mandate blanket unconditional 3-year exemptions for all. Hawkins/Chiles settled that issue and, in the process, provided a significant boost to the hush-kit market.

As the end of 1984 approached, petitioners were placing deposits and signing firm contractual commitments for hush kits. However, as we approached the end of 1984, major uncertainty remained about the availability of hush kits. No manufacturer had completed the FAA certification requirements and DOT was faced with a situation where all applicants for exemptions were claiming that hush kit equipment, if not the technology itself, was delayed or unavailable.

As December 31 approached, it became apparent that we had to choose between achieving noise compliance by grounding a number

of smaller carriers, or by granting them exemptions and letting the hush kit market work.

We made a judgment call. We decided not to put carriers out of business if they were willing to bind themselves contractually with a substantial deposit to hush kit their planes. It was also clear that without exemptions, several carriers—some of which had placed large orders that launched certain manufacturer's hush kit programs—would not be able to fulfill their contractual obligations. These defaults would have added further delays to hush kit certification.

We, therefore, issued 15 additional exemptions. Those exemptions were given to carriers with firm contracts for hush kits or replacement aircraft to demonstrate "good faith compliance," and who proved they provided "a valuable airline service," and further proved that without the exemption they would go into bankruptcy, causing "financial havoc," or that they provided "essential air service" as defined in section 419 of the Federal Aviation Act.

We limited each carrier's exemption to only the period necessary for retrofit and to the total number of operations conducted in the comparable period in 1984. We also imposed a nighttime curfew and rigorous reporting requirements.

We had to make a basic choice between achieving noise compliance by grounding carriers or by allowing the hush kit market to work. We chose the latter course, and today noise compliance is being achieved. We are convinced that our decision served the public interest.

I should emphasize that we did not open the floodgates. FAA granted only 17 exemptions out of 113 petitions received under its general exemption authority. Several carriers obtained emergency stays of the applicability of the FAA's noise compliance rules before the U.S. Court of Appeals. On March 29, the Court remanded three petitions to the FAA. The Court basically stated that:

One, the FAA had authority to grant exemptions;

Two, the FAA retains broad discretion to determine whether the public interest will be best served by granting or denying petitions; and

Three, whatever criteria FAA uses must be applied in a consistent manner.

In response to the Court of Appeals decision, we developed clear definitions of the five conference report criteria and are applying those criteria to the remanded petitions.

I would like to summarize our definitions of the five conference report criteria.

SMALLER CARRIER

We defined a smaller carrier as one which on January 1, 1985 operated nine or fewer aircraft or had 1,500 or fewer employees. Both definitions are found in statutes or other FAA regulations.

GOOD FAITH COMPLIANCE

Following the lead of Hawkins/Chiles, we recognized as evidence of a good faith compliance effort the execution of a firm contract, by March 29—the date of the court decision—to retrofit or replace noncomplying aircraft.

FINANCIAL HAVOC

We devised two alternative tests: That the operations covered by the general exemption constitute at least 20 percent of a carrier's 1984 operations over the same period; or that the deletion from the operator's financial base of the revenue produced by operations barred by the noise rules would result in a net loss of greater than 10 percent of the operator's assets.

This criterion does not allow an airline to bootstrap a claim of financial havoc by acquiring noisy aircraft after the January 1 deadline. Carriers may not obtain an exemption for noncomplying operations initiated after January 1, 1985.

TECHNOLOGY DELAYED OR UNAVAILABLE

We recognize that the hush kits were the only economically practical method of achieving compliance for most smaller carriers and that the commercial availability of these kits has been delayed.

VALUABLE AIRLINE SERVICE

We determined that if the airline provided service prior to January 1, 1985, it would be deemed valuable.

In addition, we are imposing conditions on the exemptions to limit the environmental impact. Specifically, grants of exemptions are only for the specific aircraft for which firm hush kit or replacement contracts were executed; permit only daytime operations at airports other than Bangor and Miami; and allow only as many operations in 1985 as were conducted in a comparable period of 1984.

The FAA's April 26 decision limits the number of aircraft which will receive general exemptions and, based on a preliminary review of exemption requests, we do not expect that number to be more than 100 aircraft. Since perhaps as many as 50 of these aircraft would have been exempted anyway under Hawkins/Chiles, we will have exempted only about 50 aircraft under our discretionary authority. That number represents only about 1.5 percent of the total U.S. commercial jet fleet. It is less than 10 percent of the aircraft for which Congress mandated exemptions under the "small community" provision of the act. It is a 57 percent reduction in the number of four-engine, stage 1 aircraft operated in the United States in 1984.

If the hush kit production programs go as expected, by this time next year only approximately 30 to 40 noncomplying four-engine aircraft should still be operating under exemptions. That, of course, represents a 70 percent reduction from the 100 aircraft exemptible today.

Mr. Chairman, we appreciate the committee's concern and your concern in particular. Congress provided us discretionary authority and a widely-varying set of mandates. We had to operate in a number of contexts, including that of foreign policy. Hard choices had to be made. The unavailability of hush kits—the only practical means of achieving compliance for most of these smaller carriers—presented a major impediment to our program

We shall continue to scrutinize the process to assure that retrofit is completed in a timely manner. We shall also continue to monitor aircraft operations to assure compliance with the noise rules and with the conditions of each exemption.

Notwithstanding the difficulties that have been experienced, we are making progress. Noise compliance is being achieved in a reasonable, yet very effective, manner, and noise exposure to those living near our Nation's airports is being reduced.

That concludes my prepared statement, Mr. Chairman. I would be glad to respond to any questions you or any other members would have.

[Mr. Scocozza's prepared statement follows:]

Testimony of

Assistant Secretary for Policy and International Affairs

Matthew V. Scocozza

before the

House of Representatives,

Committee on Public Works and Transportation

Subcommittee on Aviation

May 22, 1985

Introduction

Mr. Chairman, members of the Committee. I appreciate this opportunity to discuss with you today the FAA's recently published information for issuing exemptions from the noise compliance requirements of FAR 91.303. Those standards require all subsonic aircraft operated at U.S. airports on and after January 1, 1985 to meet at least stage 2 noise levels.

In your May 6th letter to the Secretary, you stated your concern that the Department's actions were inconsistent with the intent of Congress as expressed in the Conference Report accompanying the Aviation Safety and Noise Abatement Act of 1979 (ASNA). You asked several questions about our implementation of ASNA. First, you wish to know the reason for changes from previously articulated policies, changes that resulted in the FAA's issuance of several exemptions in late December 1984 and early January 1985. Second, you wish to know the justification for further changes in the Department's policies, which were set forth in the April 26, 1985 exemption granted LAC, a Colombian cargo carrier.

You also asked that we discuss the policies that DOT and FAA intend to follow in the future and the consistency of these policies with Congressional intent and the public interest. As you are aware, Mr. Chairman, all of these issues are currently the subject of litigation. Accordingly, I may be precluded from expanding on my explanations.

Statement of Policy

Mr. Chairman, we share your concern that noise compliance deadlines be adhered to and we take seriously the government's commitment to do so. We support fully the noise abatement objectives and policies contained in the ASNA. We also understand your concern that the Department may appear to have "shifted" its position on issuing noise exemptions. We hope our testimony and our answers to your questions will demonstrate that our actions are fully consistent with the intent of Congress and the public interest.

Background on Implementation of the ASNA

Before I turn to the events surrounding our decisions of December 1984 and January 1985, and our April 26, 1985 noise exemption order, an overall perspective on implementation of the ASNA is useful.

The Conference Committee report recognized that full compliance by the established deadline might create hardship situations.

In that report, Congress urged FAA to give consideration to hardship cases involving operators of four-engine aircraft which meet five criteria. To paraphrase the Report, a hardship situation occurs when: The applicant is a (1) "smaller carrier" providing (2) "valuable airline service", is making (3) "a good faith compliance effort" but (4) "needed technology is delayed or unavailable, and (5) could suffer "financial havoc" without the exemption. The Act also mandated blanket exemptions until 1988 to U.S. and foreign carriers having the capability to provide "small community service". As the Chairman knows, this resulted in the FAA issuing over 500 exemptions, mostly to larger U.S. carriers, for certain stage 1, two-engine aircraft: The older DC-9s and 737s, and the BAC-111s. Every day, these aircraft take off and land many times at hundreds of U.S. airports, some of which are noise sensitive.

After the ASNA was signed into law on February 18, 1980, FAA immediately amended its regulation to implement the Congressional mandate. Throughout the intervening years the Department repeatedly stressed that it would hold firm to the January 1, 1985 deadline. As you will recall, that deadline was established at the time the original noise compliance regulation was issued in 1976. FAA stated clearly in the preamble to the regulation and in the DOT/FAA Aviation Noise Abatement Policy of 1976, that it would impose unilaterally the same 1985 deadline for compliance by both U.S. international and foreign operators if no agreement could be reached between the U.S. and foreign governments by 1980.

Early in 1984, Secretary Dole said that "few, if any," exemptions could be expected. The Federal Aviation Administrator made the same statement. The Department believed that the enunciation of this policy would demonstrate its serious commitment to enforcing compliance. We expected that operators of noncomplying aircraft would arrange for compliance. We received, and appreciated, strong support from this Committee during that period.

In early 1984, the FAA received many petitions for blanket, three-year exemptions, petitions which failed to include any evidence of good-faith efforts, such as a contractual obligation to achieve compliance by retrofit, reengining, or replacement. Each petition was turned down, citing a failure to meet the Congressional criteria.

Some petitioning carriers, some local airport authorities, and other interests then turned to Congress. Up until that time, the only Congressional guidance on this subject was contained in the ASNA's Conference Report and in the letters from the Committee. In the fall of 1984, there was a flurry of Congressional activity and the clear message to the Department was that exemptions should be granted. Despite the Department's opposition, the Congress passed the Hawkins/Chiles Amendment, and on October 12, 1984, Section 124 of P.L. 98-473 went into effect.

Hawkins/Chiles is particularly interesting when viewed against the five criteria suggested by the 1979 Conference Report. In effect, this statute waived all criteria except for "good faith compliance", which it defined as being satisfied by a carrier's firm contractual commitment, accompanied by a substantial deposit, to retrofit or replace noncomplying aircraft. In particular, Hawkins/Chiles recognized that hush kits might be the only economically feasible means of achieving compliance for the many smaller carriers.

In the weeks immediately following enactment of the Hawkins/Chiles amendment, FAA granted exemptions to 25 carriers operating 55 noncomplying aircraft into Miami and Bangor. Nearly all of these exemptions, which were mandated by Congress, were conditioned on firm hush-kit contracts. Further, the majority of the Hawkins/Chiles exemptions were given to foreign carriers.

After P.L. 98-473 was passed, FAA continued to deny exemptions based on a strict interpretation of each Conference Report criterion, and by requiring that all five criteria be met simultaneously. By the end of November only two general exemptions had been issued, one to Icelandair and the other to Caribbean Air Cargo.

However, the nature of petitions for those general exemptions changed after Hawkins/Chiles. Before Hawkins/Chiles, many petitioners apparently believed that Congress would mandate

blanket, unconditional three-year exemptions for all. Hawkins/ Chiles settled that issue, and provided a significant boost to the hush kit market. Now, as the end of 1984 approached, petitioners were placing deposits and signing firm contractual commitments for hush kits which, at a typical cost of $2.8 million per aircraft, often exceeded the purchase price of the aircraft itself.

Status of Noise Abatement Technology

However, as we approached the end of 1984, a major uncertainty remained about the availability of hush kits that would permit many of the old four-engine aircraft to meet stage 2 noise levels.

While the FAA had demonstrated hush-kit technology for the Boeing 707 in the early 1970's, manufacturers were reluctant to make the engineering and development expenditure to market the kits until they had assurance of sufficient orders. On the other hand, customers were reluctant to place orders for equipment that had not yet been manufactured, or even certificated by FAA.

This chicken and egg situation was a principal source of delay in the development of hush kits. By early 1984, several manufacturers were exploring hush kit development for the B-707 and DC-8-50 and DC-8-60 series aircraft. The FAA had hoped to be able to certificate one manufacturer by late summer and another in the fall. The schedule, of course, was dependent on the success

and speed of the manufacturers in complying with certification requirements. As the end of 1984 approached, however, no manufacturer had completed these requirements, and DOT was faced with a situation where all applicants for exemptions were claiming that hush-kit equipment--if not the technology--was delayed or unavailable.

Situation in December, 1984

By December 1984, the consequences of not granting exemptions to certain operators became clear to us. We were not dealing with major carriers requesting exemptions for only 5 or 10 percent of their fleets. We were dealing with carriers operating 707s and DC-8s almost exclusively. In these cases there was no question about what would happen if exemptions were denied. The carrier would cease service and go into bankruptcy, even though it had executed a contract for an as-yet-uncertificated $2.8 million hush kit and had made a non-refundable deposit.

As December 31st approached, it became apparent that we had to choose between achieving noise compliance by grounding a number of smaller carriers, or by granting exemptions and letting the hush kit market work. We made a judgment call. We decided not to put carriers out of business if they were willing to bind themselves contractually, and make a substantial deposit, to hush kit their planes. We decided to do this in the context of the ASNA, which had already mandated blanket exemptions until 1988 for

large and small U.S. carriers operating two-engine, stage 1 aircraft; the ASNA Conference Report, which urged that we take into account "hardship situations;" and the Hawkins/Chiles Amendment, which mandated exemptions for certain carriers that had contracted for hush kits or replacement aircraft.

We also had to consider the effects of our decisions on the hush-kit manufacturing industry. It became clear that without exemptions, several carriers, some of which had placed large orders that launched certain hush kit programs, would not be able to fulfill their contractual obligations. These events would have most certainly added further delays to hush kit certification.

During this same period, the Department received communications from the Department of State and the Office of the United States Trade Representative, informing us of the foreign policy issues that could arise out of the denial of exemptions. These foreign policy considerations were also included in evaluating petitions for exemptions. The Department, however, has not granted a single exemption on the basis of foreign policy considerations alone.

We therefore required that carriers enter into firm contracts for hush kits or replacement aircraft ("good faith compliance"), and (1) either show that they provided a "valuable airline service", and that without the exemption they would go into bankruptcy ("financial havoc") or (2) that they provided essential

air service as defined in Section 419 of the Federal Aviation Act. Between December 28 and early January the FAA issued 15 additional exemptions:

Taking our lead again from criteria used by Congress in the Hawkins/Chiles Amendment, we limited each carrier's exemption to only the period necessary for retrofit and to the total number of operations conducted in the comparable period in 1984. We attempted to restrict these operations to a minimum number of cities. We also imposed a nighttime curfew and rigorous reporting requirements designed to help us enforce the conditions and limitations imposed by the exemptions.

We recognize that all operators had been on notice for eight years, and that the hush kits could have been certificated and available had the operators generated sufficient demand early enough. But that did not happen, and we faced a "real world" situation requiring an immediate judgment call. We had to make a basic choice between achieving noise compliance by grounding carriers or by allowing the hush kit market to work. We chose the latter course and today noise compliance is being achieved. We made that choice, Mr. Chairman. We are convinced that our decision served the public interest.

The March 29 Court Decision and the IAC Exemption of April 26

Several carriers sought emergency stays of the applicability of the FAA's noise compliance rule before the U.S. Court of

Appeals for the D.C. Circuit and in other circuits. On January 4, the D.C. Circuit granted the first of a number of indefinite stays pending its resolution of the issue. Eventually, twenty-eight carriers received stays.

On March 29, the Court remanded three petitions to the FAA in its decision in the Airmark Case (No. 84-1619). The Court basically stated that (1) FAA had the authority to grant exemptions, that (2) FAA retains broad discretion to determine whether the public interest will be best served by granting or denying petitions, and that (3) whatever criteria FAA uses must be applied in a consistent manner.

In response to the Court of Appeal's decision, we chose to enunciate definitions for the five ASNA Conference Report criteria, and to apply those criteria to the remanded petitions. Our definitions reflected the objective of achieving noise compliance by allowing the hush-kit market to work. FAA fully explained these definitions in Exemption No. 4302, issued on April 26 to the Colombian cargo carrier Lineas Aereas del Caribe, S.A. (LAC), and we are determined to act consistently with the LAC decision in granting or denying other exemption requests. That exemption has been published in the Federal Register.

I would like to comment on our definitions of the five Conference Report criteria. However, I regret, Mr. Chairman, that my comments in this area have to be brief. As I have already mentioned, this matter is currently the subject of litigation:

Smaller Carrier. We defined a smaller carrier as one which on January 1, 1985 operated nine or fewer aircraft or had 1,500 or fewer employees. Both definitions are found in statutes or other FAA regulations.

Good Faith Compliance. Following the lead of P.L. 98-473, we recognized as evidence of a good faith compliance effort the execution of a firm contract, by March 29 (the date of the Court decision), to retrofit or replace noncomplying aircraft

Financial Havoc. We devised two alternative tests: (a) that the operations covered by the general exemption constitute at least 20% of 1984 operations over the same period; or (b) that the deletion, from the operator's financial database, of the revenue produced by noncompliant U.S. operations barred by the noise rules, absent any kind of exemption (including one issued under Hawkins/Chiles), would result in a net loss of greater than 10% of the operator's assets. This criterion does not allow an airline to bootstrap a claim of financial havoc by acquiring noisy aircraft after the January 1st deadline. Carriers may not obtain an exemption for non-complying operations initiated after January 1, 1985.

Technology Delayed or Unavailable. Once again, we followed the lead of P.L. 98-473 and recognized that hush kits were the only economically practical method of achieving compliance for most smaller carriers, and that the commercial availability of these kits had been delayed.

Valuable Airline Service. We determined that if the airline provided service prior to January 1, 1985, it would be deemed "valuable."

In addition, we are imposing conditions on the exemptions to limit environmental impact. Specifically, grants of exemption (a) are for the specific aircraft for which firm hush-kit or replacement contracts were executed by March 29, 1985, (b) permit only daytime operations at airports other than Bangor and Miami International airports, and (c) allow only as many operations in 1985 as were conducted in the comparable period in 1984.

While we are granting no exemptions beyond this year, we have stated that an exemption will, if necessary, be extended to the earliest possible installation date beyond 1985, but only for a carrier that has contracted with a hush kit manufacturer that receives certification by September 30, 1985.

Environmental Progress

Some would have you believe that the FAA has been handing out exemptions with abandon. That, of course is false. FAA has denied far more exemptions than it has granted. In fact, the FAA has approved only 17% of the 113 petitions sought under its general exemption authority.

Most importantly, the LAC decision now limits the number of aircraft which will receive general exemptions, and, based on a preliminary review of exemption requests, we do not expect that

number to be more than 100 aircraft. Since perhaps as many as 50 of these aircraft would have been exempted anyway under Hawkins/ Chiles, we have really exempted only about 50 aircraft by exercising our discretionary authority. Let's look at that number:

-- It represents only about 1 1/2 percent of the total U.S. commercial jet fleet, and an even smaller percentage of the total U.S. and foreign jet fleet serving the U.S.

-- It is less than 10 percent of the aircraft for which Congress mandated exemptions under the "small community" provision of ASNA.

-- It is a 57 percent reduction from the number of four engine stage 1 aircraft operated in the U.S. in 1984.

Finally, Mr. Chairman, if the hush kit production programs go as expected, by this time next year only 30 to 40 noncomplying four-engine aircraft should still be operating under exemptions. That, of course, represents a 60 to 70 percent reduction from the 100 aircraft exemptable today.

Conclusion

Mr. Chairman, we appreciate the Committee's concern, and your concern in particular. Congress provided us discretionary authority and a widely-varying set of mandates. We had to operate in a

number of contexts, including that of foreign policy. Hard choices had to be made. The unavailability of hush kits--the only practical means of achieving compliance for most of these smaller carriers--presented a major impediment to our program.

Hush kits for two series of aircraft models are now certificated, and we anticipate that hush kits for additional models will be certificated before September 30. Again, we expect that fewer than 100 aircraft will ultimately receive general exemptions, and if hush kits are installed as expected, by this time next year only about 30 to 40 aircraft should still be operating under exemptions.

We shall continue to scrutinize the process to assure that retrofit is completed in a timely manner. We shall also continue to monitor aircraft operations to assure compliance with the noise rules and with the conditions of each exemption. Our enforcement actions to date have been effective. FAA already seized an aircraft of one carrier, and has others under investigation. Its threat to seize an aircraft of yet another carrier deterred further unauthorized flights of that carrier into the U.S. We are also determined not to allow carriers with noncomplying aircraft to frustrate noise compliance by obtaining extraordinary economic authority from the Department. In this regard, we recently denied a request by one carrier to conduct an unprecedented number of wet lease operations with noncomplying aircraft. We took this action under our independent economic authority even though the carrier has a court stay precluding the enforcement of FAA's noise rule.

Notwithstanding the difficulties that have been experienced, we are making progress. Noise compliance is being achieved in a reasonable, yet very effective, manner, and noise exposure to those living near our nation's airports is being reduced. Our present course will lead us to an even quieter environment.

Mr. ROWLAND. I thank you for your statement. I do have two or three questions I want to ask and then I will allow other members of the panel to ask questions. Also, I would ask you to stay after we have finished with this panel so that when the chairman returns he may have the opportunity to ask some questions.

Let me ask you this, am I to understand that the relaxation or liberalization of the criteria is due principally to the lack of certified hush kit suppliers?

Mr. SCOCOZZA. Mr. Chairman, I would say it's a combination of factors. In all respect to the chairman's presentation and the ranking member's presentation, I would not say that we have voided four of the criteria.

One of the criteria that has honestly been relaxed in essence or on paper has been the "valuable service" aspect. If I can, this was due to a combination of factors.

I had a statement that I was going to present, and it was actually presented before another committee of this Congress on October 4, 1984. In that statement I said few, if any, exemptions would be granted. We saw no good faith compliance efforts as of that date because nobody, Mr. Chairman, had put hard dollars down on a hush kit contract other than two carriers that had hush kits underway.

The situation changed, Mr. Chairman, because Hawkins/Chiles passed. A lot of carriers who thought they could get off scot free with a 3-year blanket exemption with perhaps just a letter to the Department of Transportation saying that they would do everything they could to try to get a hush kit within the 3 year period were turned off. Carriers realized on "Hawkins/Chiles day" that they had to get those hush kits or they had no hope for exemptions. It was Hawkins/Chiles that forced contracts coming into the Department of Transportation, and that was part of the reason that those 17 exemptions existed. If the January 1 deadline took place before Hawkins/Chiles, I fully expect that there might have been only two exemptions. The problem was a lot of carriers were led to believe that they could be in compliance under a very liberal standard that might have passed the House and Senate were it not for the efforts of this committee which worked very hard to water down the Hawkins/Chiles amendment.

Hawkins/Chiles at one time was drafted such that nobody would have to obtain a hush kit until there were at least two contractors for each aircraft type actually in business. Everybody was thinking: "Well that will get us another year or 18 months of freedom, so why should we be running into the Department of Transportation with hush kit contracts?"

Once the amendment passed, people realized they had to put their money where their mouth is, to come in compliance with an environmental action which the Department of Transportation had responsibility for.

The hush kit manufacturers also, Mr. Chairman, were coming to us and saying "We don't have any money, but we've got the technology, we've got the know how and the desire, but until people start giving us contracts we can't start producing hush kits." A year ago at this time we were anticipating that hush kits would

have been available for installation on planes before the end of 1984.

Unfortunately, at this date, Mr. Chairman, we only have one manufacturer who has been certificated. As of this date, only two planes have these hush kits on them. A year ago we would have never anticipated that, but unfortunately that's the case. We have two manufacturers that are expected to be certificated by the end of the summer but this is almost a year behind schedule because of the activity that was going on on Capitol Hill and at the Department of Transportation leading a lot of carriers to have believed that they may have been able to get out of these hush kit contracts.

From the economics of it, operators had aircraft worth $500,000 to $1.2 million, and if they didn't have to put a $2.8-million hush kit on these planes, they would try to get out of it. I don't blame them. They were led to believe that there was at least a possibility that, before they had to do that, they might have had a year to 18 month's worth of freedom. I would indicate, Mr. Chairman, that everybody who is flying with an exemption has had to put down a minimum of $100,000 on a hush kit, and even though those hush kits are not certificated yet. Some of the aircraft owners are paying between $50,000 and $75,000 earnest money a month, that is being put in escrow.

This is the kind of activity that's happened in the past 6 or 7 months. I wish it had happened 5 years ago.

Mr. ROWLAND. I understand that there are some five hush kit suppliers now seeking certification. Do you have any idea when any one or any two or three of those may get certification?

Mr. SCOCOZZA. Yes, Mr. Chairman. The vast majority of the planes at issue are the DC-8-60 series, which are hush kittable. To this date, there are no DC-8 hush kits that are certificated. There is one company, Aeronautical Development Corp., which, as of this date, has had its flight tests completed. If things move in an orderly fashion, by August it may be certificated.

Another company also provides hush kits for the DC-8-62-63 series. Their flight tests are scheduled in June and perhaps 2 to 3 months after that they will be certificated.

ComTran/Tracor/Shannon that provides hush kits for the 707-300 series are certificated now and I believe there are two planes that have these hush kits actually installed. The rate of retrofit, Mr. Chairman, is about three to four hush kits per company per month.

When all three are certificated, a maximum of 12 per month could be retrofitted.

Mr. ROWLAND. And then you think that once they are certificated that will deal with the problem that has brought us here today?

Mr. SCOCOZZA. Yes; the planes that are up in the air that are noncompliant—the 113 that the chairman mentioned—would start to be limited by 12 each month. It may be, Mr. Chairman, that some of the hush kits have been contracted for by carriers who actually have their planes either outside this country or on the ground in the United States. So, perhaps some of these may be going back into the air as compliant aircraft, that are not flying right now.

Mr. ROWLAND. Then the problem that we face here with reference to the relaxation or liberalization of your criteria is due to the lack of certified hush kit suppliers for the most part.

Mr. SCOCOZZA. In part, yes, Mr. Chairman. I would suggest the technology was developed in 1973. Unfortunately, the market never developed until 1984. It's very unfortunate. There is no reason for this other than an unfortunate set of circumstances which led people to believe that these hush kits would go into the market while nobody was putting money down. The technology just wasn't there for this reason.

Mr. Chairman, there could be noncompliant 727s, 737s and DC-9's. Hush kits that are available for those aircraft were made available several years ago and the Department of Transportation flatly denied all exemption requests by any carrier last year who was asking for exemptions for those aircraft types because the equipment and the technology had been available for a long period of time.

That type of exemption request was flatly turned down. I would also interject that, for those types of aircraft, the hush kits are much less expensive—in the neighborhood of $500,000 or less for each plane.

For these planes that we're talking about—the four-engine aircraft—we're talking about in excess of $2.5 million depending upon the number of planes being done.

Mr. ROWLAND. I have one other question and then I am going to yield. How long have these five companies been seeking certification as suppliers of hush kits?

Mr. SCOCOZZA. Mr. Chairman, the interest has been there for a long time, but the real activity has occurred only within the last year or 18 months. Mr. Plummer of the Federal Aviation Administration is with me here and indicated that there are 16 companies that are interested in pursuing certification in one form or another. The five that you are talking about are further along the process than the others.

The three that I have mentioned are the ones that are in the position of achieving the flight-test mode. ComTran has already finished and ADC is very near the end of the process. At this particular point, from the remaining 13 companies, we really don't have the statistics back from them to give the committee at this time a clear indication of when they will be certificated.

Although technology is being developed for a DC-8-50 series FAA has so far not approved a supplemental type certificate for hush kits for that series. As soon as more information is available, I would be glad to provide it to the committee for your information.

Mr. ROWLAND. There's only been 1 year or 18 months then that these hush kit suppliers have been actively seeking certification?

Mr. SCOCOZZA. Once again, the technology itself was developed by NASA and Boeing back in 1973 although it was changed a little bit because better materials had improved the technology. It has only been in the last 18 months or so that there has been a lot of certification activity before the FAA, because the manufacturers needed the start up money to get the exercise going.

Of course, there was a lot of marketing that had been going on before that to try and develop enough capital to start the process going and then come to the FAA for certification.

Mr. ROWLAND. I thank the gentleman. I yield now to the gentleman from Georgia, Mr. Gingrich.

Mr. GINGRICH. Thank you, Mr. Chairman. Thank you, Mr. Scocozza for coming up and testifying.

Let me give you a frame of reference from somebody who represents one of the two busiest airports in the country and also thousands of people who are very concerned about noise.

I think there are basically five reasons why we are concerned. I will walk through them so that you have a frame of reference for where this is carrying us.

The first is that people in the noise-impacted communities are upset. I've gotten two letters—one from the mayor of the city of Forest Park which is a copy of a letter to Secretary Dole which points out that Forest Park is a severely noise-impacted community of 18,000 people. It says specifically, "These noisy, noncompliant stage 1 four-engine aircraft are so bad that every operation degrades the environment and causes adverse impacts on individuals, families, and communities." It says, "The January 1, 1984 cutoff of operations of these noisiest of airplanes is only one step in a series of steps in a national policy to reduce aviation noise for all of us. It is essential that every single step in the process be executed fully so that each step can and will be implemented." The letter is signed by Jerry Thomascello, the mayor of Forest Park.

There is also a homeowner's group, the Clayton County Homeowner's Association, which wrote Secretary Dole saying, "We as a group of 200 homeowners are very disappointed in the loose standards now being applied to protect owners of 707's and DC-8's. It's a shame they don't have to live under them; we do. I don't want to tell our people you let us down. Do the courts have to get involved?" Sincerely, Bob Harchaby, Chairman.

The first concern is just the people out there who have been putting up with this noise and who have been promised by the Congress systematic steps.

The second concern that I hear about is some people who showed real statesmanship and made noneconomic decisions to be good neighbors. As you know, I represent the largest single employer in my district, Delta Airlines, and one of the nice things about representing both Delta and Forest Park is there is no real conflict. Delta made a $150-million decision that was noneconomic that could have rationally been used buying airplanes and other things, but they used it to be quieter on behalf of people who live near airports.

I think they have a legitimate concern that when they were good citizens—and this is my third point—a groups of people who systematically gambled that they could play chicken and win are winning. We have a group of people out there who could choose to hire lobbyists and lawyers or they could choose to hire engineers and manufacturers. By your own testimony, they systematically avoided being good citizens up to the last possible second and I think there is some concern that they created precisely the crisis of chicken and egg you described. They are the people who refused to

order the hush kits; they are the people who refused to create the industry that was necessary and now they are coming here asking for an exemption.

Fourth, Hawkins/Chiles is a disaster but it's a minor disaster. I would hope that the Department of Transportation would minimize the foolishness of Congress in a narrow way rather than use that as an excuse to maximize its impact. I understand the case which I think is a reasonable and honorable one that you shouldn't be punishing non-Miami, non-Bangor aircraft at a time when Congress has been stupid.

I would plead with you not to extend Congress' stupidity to the Nation at large.

Fifth, I think there's a very sincere concern that if we let this slippage continue, it sets a terrible precedent for 1988 on twin-engine aircraft. We're saying, in effect, to the next cycle, why don't you play chicken, hire a lobbyist, hire a lawyer, and don't worry about setting up the next cycle of change because you can probably bluff and, after all, that's a Presidential year. Maybe you can get a bluff all the way to 1989 and then we will have a brandnew Secretary and a brand new Administrator and they aren't going to know what they are doing for at least 6 months and that will be the middle of 1989, and—shoot, do you figure interest on the money—you might be able to avoid doing anything until 1990 or 1991.

After all, we know what the track record is. You are better off in this city to hire a lawyer than an engineer because the lawyer may get you an exemption for a year. At $2.8 million at prime plus, that ain't bad! It's cheaper than the lawyer.

In that setting, let me ask you a couple of questions, if I might. I just wanted to give you a framework so you understood why some of us have a——

[Laughter.]

I appreciate your coming down and walking through this. I share your frustration. I think the actions last fall of the Congress were ridiculous and I think it's absurd of us to have allowed two Senators—even if they are good and decent people—to have carried that kind of local porkbarrel—I know saying this in the Public Works Committee room may be heresy. We just passed out a Clean Water Act this morning so this committee does do some things that I think are pretty statesmanlike.

Some foreign carriers with noncompliant aircraft want to ferry these aircraft into this country solely for the purpose of heavy maintenance. Should an exemption, in the long run, be granted for that purpose if it's at an airport where they are only coming in purely for maintenance, or should we say to them, also, that you've got to be noise-compliant even if your only purpose for coming to the United States is maintenance?

Mr. SCOCOZZA. Do you want me to skip those five questions and just get down to No. 6 and No. 7?

Mr. GINGRICH. Specifically, first, should foreign carriers be able to ferry aircraft into this country that are noncompliant if they are coming purely for the purpose of maintenance?

Mr. SCOCOZZA. Congressman, our position is that if someone has an exemption to operate 20 times into the United States and they

choose to use one of those operations as a maintenance stop, they're free to do that.

Mr. GINGRICH. In the long run, even that will be eliminated, is that correct?

Mr. SCOCOZZA. Yes.

Mr. GINGRICH. Second, you mentioned in your testimony that on June 1, 1986 there will probably still be 30 noncompliant airplanes still flying but 70 percent of the current noncompliant four-engine aircraft will no longer be noncompliant. How much longer do you think those 30 will be flying and at what point do you think we will have zero noncompliant four-engine aircraft?

Mr. SCOCOZZA. There is no reason to believe that anybody would be flying next year who does not have a binding contract with a certificated hush kit manufacturer that is producing full steam ahead. If at this time next year there are 30 aircraft still non-compliant, and we have three hush kit manufacturers only, that may require three more months to get the individual aircraft finished.

Mr. GINGRICH. But a conservative estimate on your part would be that no later than next Thanksgiving all of the four-engine aircraft should be compliant?

Mr. SCOCOZZA. That's correct.

Mr. GINGRICH. Or by election time?

Mr. SCOCOZZA. That's also anticipating no other acts of Congress that might be passed that would give some kind of salvation to carriers who have no technology available to them.

Mr. GINGRICH. I am sympathetic to your constant reminder that it is Congress that causes some of these problems.

Let me ask you, though, what would have happened had Hawkins/Chiles not passed? What would you have done on January 1?

Mr. SCOCOZZA. If Hawkins/Chiles had not passed, I think my October 4, 1984, testimony would have been consistent with the way the Department of Transportation would have concluded its responsibility—that no one who did not have a binding firm contract would have been allowed to have an exemption.

I would point out, Mr. Chairman, that out of Hawkins/Chiles, where we were forced to give exemptions for Miami, we had already turned down—as of the day that Hawkins/Chiles passed—several exemptions for carriers asking for what they were given under Hawkins/Chiles.

Mr. GINGRICH. I don't fully understand this. So, on the first of this year, what would then have happened to all of those planes that were not exempted?

Mr. SCOCOZZA. Mr. Chairman, it would be hard for me to say because, if Hawkins/Chiles had not passed, people would have finally had to believe the Department of Transportation saying "You had better put your money where your planes are." There would have been more than two exemptions. I don't know how many more, but they certainly would not have involved as many planes as are in the sky now. A lot of the planes that are in the sky as a result of Hawkins/Chiles we would not have put in the sky.

As a matter of fact, a lot of the planes in the sky because of Hawkins/Chiles were ones we specifically denied.

Mr. GINGRICH. OK. What would have happened to those airlines and those aircraft that you denied? Would they literally have been blocked from flying until they——

Mr. SCOCOZZA. They would have been grounded or they would have been sold or they would have been ferried outside the United States of America for the period of grace that the Administrator gave the industry. I think it was about 5 or 6 days—January 1 through January 5—where carriers that did not have exemptions were either taken to court or told to take their planes outside the country.

Mr. GINGRICH. We're going to have some of these people testify later on and I'm going to ask them this but I would like to hear your interpretation first. What do you think their calculations were that led them to play chicken right up until the last moment? Why were they systematically avoiding good faith implementation of the law and what did they think would happen if Hawkins/Chiles hadn't passed?

Mr. SCOCOZZA. There was a lot of activity. I was in meetings where I saw attorneys kicking their clients under the table not to say things. We were saying "Get your money and get your contracts" and people were kicking under the table. They would say "there should be at least two providers of a hush kit so we can go out there and get the best value for the dollar."

There was that type of activity going on, and it was that kind of thing that led a lot of these people to believe and listen to their attorneys and listen to the lobbyists.

Mr. GINGRICH. I think this is part of the complexity that frustrates some of the folks that are on the other side of this issue. As I understand it, they cost about $2.8 million a kit.

Mr. SCOCOZZA. Yes.

Mr. GINGRICH. If their attorney wisely got them an additional year of holding onto their own money at about 10 percent, they made $280,000 and even at Washington lawyer's fees they had something left over.

In effect, weren't their attorneys giving them good advice? The gamble worked.

Mr. SCOCOZZA. The attorneys were giving them good advice in terms of Capitol Hill. They were giving them bad advice in terms of DOT.

Mr. GINGRICH. Except that DOT has now interpreted Hawkins/Chiles broadly as the leverage point to be fair to everybody else so that now everybody is covered by it.

Mr. SCOCOZZA. If I could put this a little bit in perspective. Outside of Miami, there are 55 aircraft in the air because of exemptions that DOT has given under the general exemption authority which this committee is very concerned about. Out of those 55 aircraft that are in the sky, 26 of them are also in the sky because of Hawkins/Chiles. If you take away 7 of the aircraft that are flying between Hawaii and essential air service points in the South Pacific, you come down to 22 airplanes outside of Miami that are in the air because of general exemption authority because of DOT.

I would suggest that that's not unrealistic. At one time, there were exemptions representing over 195 aircraft in front of the Department of Transportation. I would be the first one to tell you if

we have abused our authority, but I think we have acted in a very responsible fashion. The facts of life were that via Hawkins/Chiles, Congress changed the application of criteria. We were talking about showing good faith compliance in a number of fashions, but Congress and the majority leader of the U.S. Senate, in passing the Hawkins/Chiles language said that the Department of Transportation is free to apply Hawkins/Chiles to the rest of the country if it wants to, though we did not.

One very salient point is that Hawkins/Chiles and everybody involved in that process clearly said that "good faith compliance" is "you've got a hush kit contract and money on the line."

It's those kinds of activities that had to have a bearing on our administration of the act. We didn't have regulations to implement this and perhaps, in hindsight, that was a bad call and should have been done several years ago. What happened was we had suggested guidelines and a conference report back in 1978, which I helped write when I worked in the Senate Commerce Committee. I keep kicking myself for not trying to be more specific then in terms of what Congress' intent was.

Congressional intent at that time, in my perspective, was not to punish people but get them to put compliant aircraft in the sky.

Mr. GINGRICH. I think, on balance, you are very likely, at some point in the future, to have four-engine aircraft that are compliant and I don't think anyone is here suggesting that you are a noise hog and that you love noisy aircraft. I think you can make a good case that you are making a good faith effort in a complicated situation not to unduly punish anybody and, at the same time, to be pretty strict.

What message should the two-engine aircraft owners be getting and their lobbyists and their attorneys from this cycle? What should they now be thinking is their best strategy for the next 3 years given what they are seeing here. What advice would you have both for us and for them?

Mr. SCOCOZZA. The answer is obvious and that's the answer that we have already given to two-engine carriers who have asked for exemptions this year. They will flatly be turned down because there are a number of hush kits on the market that have been on the market for several years and they had better go spend $150,000 on their 727-100's and they had better spend $350,000 on their 737's. If they don't do that, they better not come crying to us because we will not give them relief.

I would make the observation that there are 368 of these two-engine aircraft in the sky right now. It has come down from about 500. We may have 250 near the end of 1988 and, all of a sudden, people are going to realize that they all have only so much time. They will all take their money in good faith and all go to their manufacturers, and the manufacturers will tell them that they can't do it that fast.

The question is going to be whether or not DOT will forgive them. Most of them are large carriers that have the wherewithal to fly alternative aircraft. The problem is will Congress give them a reprieve à la Hawkins/Chiles? I don't think so; I hope not.

Mr. GINGRICH. Should Congress, in effect, be considering seriously this year passing a mandate to require all carriers by May 1 of

next year to have contractual plans that get them to noise compliance by January 1, 1988?

Should we be preemptively striking at them rather than waiting until late 1987 to discover the crisis?

Mr. SCOCOZZA. I would say that's worth exploring but I don't know if it is necessary. I don't want to prejudge the industry and indicate that if you're owning an aircraft worth $15 million that you don't have $150,000 to put a hush kit on it. If you don't, there's something wrong with the company.

Mr. GINGRICH. Under the free enterprise system, there are those moments in life when——

Mr. SCOCOZZA. I would probably recommend against it, Congressman because, if the legislaive opportunity is there, the other side of the story might be presented and we might be looking at an extension of Hawkins/Chiles.

Mr. GINGRICH. I guess I just want the administration to look very seriously because I know you do want to enforce this and I know your goal is to have as little noise as possible and I think, on balance, you've been very sincere and very serious about this. I'm just suggesting to you that you ought to be thinking about ways to preemptively pressure people so that they've made the good faith effort in an orderly manner prior to the deadline crisis rather than wait until mid-1987 and suddenly discover that they haven't done it.

I'm not sure how you should do that but I am just passing that along to you.

I yield back to the chairman.

Mr. ROWLAND. I thank the gentleman from Georgia. The gentleman from New York, Mr. Boehlert?

Mr. BOEHLERT. Thank you, Mr. Chairman. I will admit to being uninitiated because this is my first meeting as a member of this subcommittee. At the risk of sounding naive, I just want to say I like what I hear from you today. You seem to be on course and you seem to be very firm in your convictions. I do have one question, though. Who makes the determination? Is it FAA or DOT?

Mr. SCOCOZZA. The Secretary of Transportation is the boss, Congressman.

Mr. BOEHLERT. Second, I would like to know how many of these hush kit manufacturers do we now have?

Mr. SCOCOZZA. There is one that is already certificated providing the hush kits, and there are two that are very close to certification. There are two that are in the process of serious negotiations with the FAA and there are additional ones that are in the planning stages.

Mr. BOEHLERT. So you wouldn't anticipate next year at this time being in the same position?

Mr. SCOCOZZA. As I indicated earlier, under the Department of Transportation/FAA rule that went out, anyone that is flying in 1986 can only be flying if they have a contract for a hush kit that is being produced by a manufacturer that was certificated by September 30, 1985. It's just a matter of time when those planes disappear as noncompliant and reappear as compliant.

Mr. BOEHLERT. You do anticipate further certification between now and then? That's the key point.

Mr. SCOCOZZA. Yes.

Mr. BOEHLERT. I just like what you say. Thank you.

Mr. ROWLAND. I thank the gentleman. The gentleman from California, Mr. Anderson.

Mr. ANDERSON. Thank you, Mr. Chairman. First, just a question about this hush kit. What is the difference, in your mind, between hush kit and retrofit?

Mr. SCOCOZZA. Congressman, a retrofit is putting on new engines that are much quieter. It's about a $20 million proposition and that's what a lot of our major carriers chose to do. I believe Delta was an example of a carrier who chose—and Transamerica Airlines—to take the old noisy engines off and replace them with newer quiet engines.

A hush kit is almost like a muffler—it's actually a form of insulation. It doesn't do anything to change engine operation——

Mr. ANDERSON. Is it as good as far as the noise is concerned?

Mr. SCOCOZZA. It makes the engine quieter.

Mr. ANDERSON. Not really. It doesn't meet what we were talking about when we passed the law.

Mr. SCOCOZZA. It will meet stage 2 requirements.

Mr. ANDERSON. It will meet stage 2.

Mr. SCOCOZZA. Yes. It will be as quiet as a 727-200 perhaps.

Mr. ANDERSON. In your talking, you've been talking a lot about hush kits. I'm the author of the bill; and when we passed it I had never heard of the word. We were talking in those days about trying to get the noisy airplanes out of the air either by getting rid of them or retrofitting them or doing something that would make them meet even further stages down the road.

I was listening to my colleague from Georgia talking about Forest Park and so on. We held hearings all over the country. I stood in Forest Park under the planes and listened to them come in with the same people he talked about. We tried to go into this extensively to find what the reaction would be—we weren't guessing and I do want to congratulate Delta, Mr. Gingrich, for the job—they were the leaders in trying to meet the requirements of our law.

When we wrote these exemptions, I thought we tried to make it clear. We didn't say that we just hoped somebody would do something. We said in every case, to get an exemption you had to be a smaller carrier, you had to be making a good faith compliance effort, there wasn't needed technology available or it was delayed, you could suffer financial havoc, and you performed a valuable airline service.

Each of them were kind of stressed and the airline service that was valuable was one that almost the country would collapse if you didn't have it. In other words, we meant what we said when we passed the bill. I'm a little disappointed in what has happened. If I was somebody out there, this list of exemptions would certainly give me a message that they didn't mean what they said when they passed this bill in 1980.

A lot has been said about Hawkins/Chiles. You have to remember that came in, as I understand it, at 3 a.m. on a set-aside. There was no debate or discussion; it just got put in and it was tacked onto a continuing resolution that affected everything in the whole

country and it passed. It's pretty difficult to vote against something that you need to keep the country going. When this was tacked onto it, it didn't have a fair chance to be debated or discussed or amended. I frankly think that you people should have made a bigger stink in opposing it and kept it out. I realize it was done in the Congress, but I think you should make it clear now that you do not approve of those kind of exemptions unless they meet those very strict things that we put in there.

There's talk around here now that you don't even worry about the five criteria; what is it—a wink and a nod? That's how they refer to you; you sort of wink and that's all you have to do. You don't really try. I assume that close to 90 percent of all the people in all the airlines have met the requirement. I think it's unfair to them to know that this other bunch of people get in when most of them have tried to do it. We told them to go out and spend millions of dollars and bring it up to date, and they get nothing for it except they have met the requirement, and these other people are getting along without it. I think, frankly, we ought to be doing something.

I was glad to hear the talk about Forest Park—not that I want them to be noisy in Forest Park—I know it's that way in my part of the country. The people are not satisfied with the airlines coming into Los Angeles with the noise. They assume that they are meeting the requirements and they want us to do even more. That's the message I want to leave with you that we had hoped that, 5 years down the road, every airline flying in this country and into this country would be meeting our noise requirements. That was the message we were trying to send and I would hope that any other kind of a message should be stopped. I think what we want is airplanes to be good neighbors.

I don't have any particular question, I just wanted you to hear my view as an interested person in this, some years back.

Mr. SCOCOZZA. If I might just make an observation about what you've said, I agree wholeheartedly with so much of your comments. Back in 1978, I was lying over in Lady Bird Johnson Park listening to these flights flying over, as well. I was helping my bosses in the Senate Commerce Committee understand the seriousness of this issue and why the legislation had to pass. It was a serious environmental issue. A fact that a lot of carriers faced back then, when they were expecting $2 or $3 per gallon for fuel, was that putting a hush kit on—for $2.8 million—was not going to make those aircraft very economical anyway because they continue to burn so much fuel. I would note that "reengining" is putting new engines on and "retrofitting" is about the same as hush kitting.

I fully sympathize with the carriers like Delta and Transamerica. They chose to put $20 million worth of new engines on because the technology was available. They were choosing between the alternative of a $3 million hush kit or a $20 million engine. Three million dollars might have been throwing corn down a rathole because the planes were still inefficient at 1978 fuel-cost levels.

That was a factor that has disappeared. As the cost of fuel went down, these older airplanes became more and more attractive. I certainly agree with what you said about innocent people and their eardrums. I think Miami, ironically, back in 1978 was one of the

loudest opponents of any exemptions at all. One of the things we have to wrestle with now is looking at this particular situation and realizing that a lot of communities were saying to us it was OK to hurt their eardrums. What we have done in our exemptions is avoid the noise-sensitive areas. We have not been giving blanket exemptions to go into JFK airport. A lot of the permissions have been to avoid the noise sensitive areas as much as possible.

I think the kind of exemption activity that we've undertaken is trying to be as much in compliance with the act as we possibly can. As you mentioned the five criteria, I believe we have fulfilled all five of the criteria. With respect to financial havoc, virtually all of the carriers outside of Miami were talking about bankruptcy.

Mr. ANDERSON. Didn't you say just a minute ago in your own remarks that in the last 6 or 7 months there's been an attitude of encouraging not to retrofit?

Mr. SCOCOZZA. Yes. Attorneys telling their clients, the carriers, not to worry about retrofitting because they might get a blanket exemption for 3 years.

Mr. ANDERSON. Where would that kind of attitude come from? It didn't come from us, I don't think.

Mr. SCOCOZZA. It didn't come from us, Congressman, because we were telling people that we want to see money, solid bucks "on the line" to put these hush kits on the plane. Up until October 4, that had very clearly been the position of the Department of Transportation.

Talking about Caribcargo and Icelandair, they agonized at DOT over proving to us financial hardship—that they were, in fact, trying to get into negotiations with a hush kit manufacturer. The problem was that we were telling them to put $2.8 million on the line without having a guarantee at that particula time that the hush kit was actually going to be developed. It's hard for me to determine how anybody could demonstrate good faith when they are asked to put $2.8 million on the line with a company which had yet to have its products certificated by the FAA.

In turn, a lot of escrow accounts were opened to show good faith by these individual carriers. The available technology was clearly not there. These folks were not in a position to put $20 million worth of engines on their planes when fuel was so cheap. The economic alternative just required that they put these hush kits on to provide a valuable service.

I would have been delighted if the carriers, instead of reengining back in 1978, had just put these hush kits on because the money would then have been in the market, the technology would have also been there, and all through 1984 we could have been in the very comfortable position of telling the four-engine operators exactly what we were telling the two-engine operators—the technology is out there and it's available, so put it on your planes and you don't need an exemption. We really didn't have that alternative because the market never developed and people didn't go to those hush kits. It wasn't until 1984 that they did.

There's an example of a carrier in 1983 being the first carrier to put money on the line and become a launch customer for one hush kit manufacturer. They weren't even operating then—they were showing good faith by putting money on the line even before they

started operations. They didn't start operations until 1984. If you're trying to develop a St. Francis of Assisi example, that would have been one because they were respecting the laws, they bought the technology for their operation and had it hush kitted.

It's hard for us to say that that carrier did a disservice. If anybody should have gotten an exemption, that carrier should have on the "good faith" criterion alone. It was, in fact, granted after Hawkins/Chiles. We did do our very best to develop that particular technology.

With respect to small carriers, we never articulated what a "small carrier" was. After December 28, we chose to use existing definitions in the statutes and in the FAA regulations which established a small carrier as nine planes or less or 1,500 employees or less.

Mr. ANDERSON. What was your position on Hawkins/Chiles? Were you in favor or against it

Mr. SCOCOZZA. Violently opposed, Congressman.

Mr. ANDERSON. Did you make it clear?

Mr. SCOCOZZA. Yes. I can't tell you the abuse I suffered personally in terms of going into meetings and literally being called un-American and not being allowed to participate. Time and time again, in discussions I had with members of Congress that were interested in getting hush kits exemptions for carriers that DOT felt did not deserve them, they felt there was no alternative but Hawkins/Chiles.

Perhaps DOT was indirectly the cause for Hawkins/Chiles. I'm sure the people that were active in that exercise will speak on that particular point. They felt there was no remedy at DOT and that unless they got legislation, the carriers they were concerned about would not get any relief.

I believe they were right because they weren't going to get any relief unless there had been money put down on the line. That's one positive thing that Hawkins/Chiles did; it established the fact that without putting the money down on the line, they weren't going to get an exemption. Unfortunately, Hawkins/Chiles gave an exemption to some other classifications of carriers that I believe are in trouble because they don't fit the DOT criteria for the general exemption authority which they have to apply for the period beyond January 1, 1986.

Mr. BOEHLERT. Will the gentleman yield?

Mr. ANDERSON. Yes, I will.

Mr. BOEHLERT. I'm a new member on the committee and I'm still in the learning process. Do the noise compliance requirements apply also to military aircraft?

Mr. SCOCOZZA. I don't believe they do.

Mr. BOEHLERT. Thank you.

Mr. SCOCOZZA. I wouldn't attempt to put a hush kit on a B-1 bomber.

Mr. MINETA. What about Air Force One?

Mr. SCOCOZZA. I would use my good offices to suggest that that took place. I believe there are new engines on Air Force One, so that wouldn't be necessary. That's not right? Well, it was a good guess, and that's the only guess I've made today. Everything else

has been based on fact and detailed and meticulous research. [Laughter.]

Mr. GINGRICH. I wanted to pursue three questions. First of all, there's apparently one company which does maintenance which is very concerned about this whole issue of whether or not it's going to be able to ferry in aircraft for the sole purpose of maintaining them from a foreign country. The concern is that if we insist on retrofitting these particular aircraft, it would be cheaper for that airline to go to another country than it would be to go through the process of retrofitting and they fear they will suffer a very substantial loss of jobs in this particular town in Tennessee.

Are there any circumstances under which they have recourse or is their problem that they had better find another business?

Mr. SCOCOZZA. I think that's the case, Congressman. I think there might be a unique circumstance if an American-owned plane were going to come home to have a hush kit put on it—I think that would be a little bit of a different situation. But if it's a matter of having routine maintenance, I believe the answer is no.

There is a situation, Project Orbis, that is the Flying Eye Hospital that is operated by an international charitable organization that wants to have its plane come back one time to U.S. soil for routine maintenance. I think, for humanitarian reasons, that kind of situation might be tolerated. That would be the exception.

I do not see any kind of general exemption authority for maintenance operators. Some airports will have a tremendous amount of difficulty with that position.

Mr. GINGRICH. When you were suggesting that there either was no available technology or that the hush kit manufacturers were not really in existence at a certain point in time, don't noncompliant operators have the technical option, if they wanted to, of grounding their noncompliant aircraft and leasing a compliant aircraft that would then be able to keep them in business while they completed the hush kit.

Mr. SCOCOZZA. That's exactly right. Let's say someone wanted to do that on December 31, 1984. If they were able to get a hush kit contract, they would probably be given a retrofit date near the end of 1985, which means they would have to lease an aircraft. Aircraft leases are generally 2.2 to 2.5 percent of the cost of the airplane per month.

Generally, a lot of the carriers could demonstrate that their financial carrying cost of their own aircraft plus the monthly leasing costs would have put them in bankruptcy, because the plane might have had to be grounded for a year.

Mr. GINGRICH. I was going to walk you through that for just a second. As I followed your math a while ago, you got me down to the total of 22 aircraft that are exempted that are neither Hawkins/Chiles nor vital service in the South Pacific.

Mr. SCOCOZZA. Right. Not to mislead you, Congressman, perhaps those 22 aircraft would be—that is, I'm saying that 26 of them are Hawkins/Chiles anyway——

Mr. GINGRICH. We're down to 22 that are pure, non-Hawkins/Chiles—in a sense, I understand your position. It's not an illegitimate position, despite the fact that I clearly represent both good citizens like Delta and people who are noise-impacted like Forest

Park. I'm not trying to put you on the spot. I think that Hawkins/Chiles helped and I understand your concern for not picking on some airline that wasn't smart enough to get a Senator to stay up until 4 a.m. and slip something in on the appropriations bill.

I want to come back to those 22 for just a moment. How many companies do those 22 aircraft represent?

Mr. SCOCOZZA. I believe, 21.

Mr. GINGRICH. So, they are basically little companies that have one aircraft and so forth. There were, as I understand it, five criteria that this committee and the Congress rather explicitly laid out in report language. Do all 21 of those companies meet all five criteria or, in fact, has that criteria had to be sort of Hawkins/Chile-sized, if that's a term, to dramatically expand it into sort of an elastic set of criteria?

Mr. SCOCOZZA. All of the carriers outside of Miami meet the five criteria under the DOT guidelines set out in the LAC decision.

Mr. GINGRICH. You are suggesting that, in fact, if we were going to walk each of those companies through, we would discover that they would meet all of those five criteria? Did you achieve consistently by unilaterally widening it?

Mr. SCOCOZZA. What we did was just clearly define it. The relaxation could be perceived to be on the element of "valuable service." I would be glad to get into that in detail for you to help you understand our internal observations about valuable airline service. "Small carriers" equally applied to everyone who got an exemption; "available technology"—we found all last year that the technology was not available, and that was the only reason on which we would consider exemptions. Up until now, there has only been one manufacturer who has been able to put two hush kits on two planes. The technology is generally not available.

We looked at what Hawkins/Chiles said about "good faith compliance," and it basically said that it was putting $2.8 million down on a $500,000 to a $1 million aircraft, along with getting the first available installation date.

"Financial havoc"—for the most part, I think the carriers can demonstrate that they would have gone bankrupt. It's hard to be clear on that because we didn't want to encourage an atmosphere where people would lie to us. What we wanted to do was identify a program and I think FAA did a fine job of saying if 20 percent of the operations of the carrier over 1984 or if no exemptions would result in the loss of 10 percent or more of the assets of the carrier, that was sufficient financial havoc.

That's what it comes down to. The tough part is "valuable airline service." This is an incredible problem because every type of carrier had different kinds of value. An international carrier could argue in any courtroom that their service is valuable because the United States of America negotiates for it. Let me tell you, negotiating for something means there's value to it because we have to give something up for it. They will argue that the service is valuable.

We testified that we were going to avoid situations where we were going to leave a market with nothing there but U.S. carriers because that would have severe bilateral problems. We didn't have to get into that kind of exercise.

Mr. GINGRICH. Of the 20 companies you're talking about, having finally wrung something out of somebody you wouldn't want to get involved in giving it back unilaterally.

Of the cases you're exempting, how many of them could you seriously define as offering a unique service or a service which would not be almost instantly replaced that is of value. How many would fit a community value sense of the term valuable service?

Mr. SCOCOZZA. To correct the record, there are 13 carriers. Having analyzed it, we conclude it's almost impossible to put a value on any particular classification of service. What we have done instead is to say "If it was provided in the market last year, it was valuable."

I know that seems like a very weak standard——

Mr. GINGRICH. That's topographical, isn't it? If you existed last year, you're of value; since all of you existed last year, by definition you fit the fifth criteria.

Mr. SCOCOZZA. We were evaluating charter carriers, for example, who were looking for exemptions. How can you measure the value of a charter carrier in the deregulated skies of the United States? I think I feel very comfortable in saying that charter carriers are valuable and they provide valuable service, but it's difficult to define value from a charter carrier's perspective.

Mr. GINGRICH. My impression is while you can make a fair case for No. 4, financial havoc, my hunch is it was not the intent of Congress to define the concept of valuable airline service as a totalogy by which if you existed, you were of value in the marketplace and, therefore, you met the criteria. I suspect our concern was value to the community in cases of unique service into a community or a situation where we had an American route that we did not want to have disrupted by a multilateral setting.

My guess is the Congress intended the term "valuable airline service," in a noncommercial and community-oriented sense of the term, "value." I'm not an expert of the act, but that's my hunch.

If we took those 13 carriers and applied those criteria to them, I'm not sure how many of them would fit that sense of being important to the community, which is what I think the term, "of value," meant.

You did the best you could to implement the intent of Congress and did very well on the first four, and on the fifth, you in effect, just took a pass and blanketed everyone because they were in existence and, therefore, were of value.

I'm with you. I think it's an infuriating situation.

Mr. SCOCOZZA. I think that the Hawkins/Chiles criteria not addressing "valuable airline service" was a contributing factor to the viewpoint I am giving you today. I didn't like it at all.

Mr. GINGRICH. Thank you very much. Thank you, Mr. Chairman.

[At this point, Mr. Mineta assumed the chair.]

Mr. MINETA. Thank you very much, Mr. Gingrich. Mr. Secretary, I apologize for having to leave right after starting the hearing.

As I understand it, the heart of your testimony is that late in December 1984, you realized that sticking to the compliance deadlines as you had promised to do might mean grounding some carriers.

On this basis, you made what you referred to as a judgment call that you would give an exemption to any carrier that was willing to sign a hush kit contract. I would say that this was very poor judgment. No one likes to see an airline grounded, but let's look at the other side. First, you were ignoring a congressional directive; the Congress told you the factors to consider in an exemption and you decided to ignore some of those factors and reinterpret others. I can't agree with your suggestions that the small community exemptions in ASNA and the exemptions in Hawkins/Chiles gave you any authority to ignore the Congressional directives on four-engine aircraft.

ASNA and Hawkins/Chiles were independent expressions of congressional intent. They were in no way intended to undercut the clear cut guidelines that the Congress gave you on standards for exemptions for four-engine aircraft.

In addition, as I pointed out in my opening statement, your so-called judgment call rewarded those carriers that had been most willing to ignore the compliance deadlines, even to the extent of buying noncompliant aircraft months before the compliance deadline.

In your testimony, you refer to the unwillingness of some carriers to comply as the real world. I would suggest to you that when the real world ignores compliance deadlines, it is the government's responsibility to bring the real world into line, not to reward noncompliance by exemptions.

Turning now to some of the specifics in your testimony, you state that FAA has approved only 17 percent of the 113 petitions that have been filed. Doesn't this statistic highlight the unfairness of your approach? I would assume that many of the carriers which were denied exemptions dropped their plans to operate in the United States and made arrangements to acquire other aircraft.

If these carriers had known that it would be possible to get an exemption by signing a hush kit contract anytime up through March 29, 1985, the carriers might have decided to continue to operate. Wasn't your December 28 change of policy unfair to those carriers that were denied exemption authority early in the process?

Mr. SCOCOZZA. No; I would say that very clearly, because when acted on December 28, it had been after Hawkins/Chiles—after Congress mandated that we give exemptions to carriers that we had already turned down. When we issued our exemptions on December 28, 1984, on our own initiative, we reexamined the Airmark decision and gave that carrier an exemption. We went through everyone of the 113 applications to make sure that we consistently applied it to all 113.

Yes; there was a change from before Hawkins/Chiles to after Hawkins/Chiles, but on December 28 the Airmark application was, in fact, approved on reexamination. I would not say that the DOT, in anyway discriminated against any of the carriers that had previously been turned down.

We granted 18 of 113 applications. We, specifically, turned down applications by subsidiaries of carriers that had compliant aircraft. Replacement carriers really weren't an alternative. It was very difficult. There are some carriers that just went out of the market, and they are now just leasing space on other individual carriers.

It's not to say that an airline was evil for buying an aircraft after January 1, 1980. In my testimony on October 4, 1984, before any exemption was approved by the Department of Transportation we talked about the fact that when you bought an aircraft didn't identify whether or not you were guilty of something. The controlling factor was the compliance attitude.

We have to take all of this into context and I think we have, in fact, done a good job.

Mr. MINETA. First of all, there's a reliance on the part of carriers prior to December 28 that they weren't going to be able to get an exemption because of what had been occurring up to that point. All of a sudden, there's a change on the 28th.

Mr. SCOCOZZA. Mr. Chairman, there's no dramatic change. That's the thing that I'm trying to impress upon this committee, with all due respect.

Mr. MINETA. Did you read the court decision? It seemed to say on the 28th there was an abrupt change.

Mr. SCOCOZZA. The court decision indicated that they were very upset about the way we had been granting exemptions—that they were inconsistent on their face—and told us to apply these things any way we wanted if we would just be consistent.

All through our testimony the fundamental thing that we stress was that there had to be a binding contract. That was unacceptable to the carriers, and they wanted a 3-year blanket exemption until there were two or more hush kits available for each different type of aircraft.

They continually felt optimistic about the chance of a legislative reprieve.

Mr. MINETA. Mr. Secretary, in that court decision they didn't say a hush kit was enough—they said you had to meet all five criteria.

Mr. DEAN. No, Mr. Chairman; the court did not say that.

Mr. SCOCOZZA. Mr. Chairman, this is Mr. Warren Dean, our general counsel.

Mr. MINETA. Wasn't that what the FAA was saying up until the 28th?

Mr. DEAN. Yes, sir; the FAA had listed all five criteria.

Mr. MINETA. What was the change on the 28th? Up until the 28th, you were saying that there are five criteria to meet.

Mr. SCOCOZZA. Mr. Chairman, the five criteria are met. We can go through each one of the individual criteria and help you understand how I believe each one of these individual carriers have met the criteria and the difficulties we've had with each one of them.

Mr. MINETA. Before December 28, 1984, FAA issued approximately 80 orders interpreting the five criteria which Congress had said should be applied in determining whether to grant exemptions from the January 1, 1985 deadline for four-engine jets. I generally agree with the analysis in these 80 orders.

I would like you to comment on the statements of these FAA orders and explain why they are any less relevant today than they were when the orders were issued. First, let's discuss the test of financial havoc and good faith.

Many of the carriers which have been granted exemptions acquired their aircraft well after DOT and the Congress had established a compliance date for four-engine jets. Indeed, many of the

carriers for which FAA granted exemptions acquired noncomplying aircraft in 1983 and 1984, knowing full well that these aircraft could not be operated after January 1, 1985. I would like, at this time, to place in the record a list of carriers currently allowed to operate noncomplying aircraft and the dates on which they acquired these aircraft.

[List referred to by Mr. Mineta follows:]

5-10-85

CURRENT OPERATORS WITH NON-NOISE-COMPLYING FOUR-ENGINE AIRCRAFT

	OPERATOR	STATUS	AIRCRAFT	SUPPLIER	SCHEDULED DATE
1.	Icelandair (Iceland)	Court stay	2 DC-8-63	AATI	11-30-85
2.	Caribbean Air Cargo	Court stay	2 707-351C	ATS	7-31-85
3.	Hawaiian Airlines(EAS)	ASNA exempt	2 DC-8-62/63	TNC	6-30-85
4.	Arrow Air	Court stay	12 DC-8-62/63	TNC	7-31-85
5.	Airmark	Court stay	1 707-138	ATS	5-31-85
6.	Buffalo Air	Court stay	2 707-320	ComTran	5-31-85
7.	Rich International	ASNA exempt	3 DC-8-62	TNC	8-30-85
8.	Ports of Call Travel	Court stay	8 707-100/300	ComTran	6-30-86
9.	Airlift International	Court stay	3 DC-8-54/61	SAI	11-30-85
10.	Zantop	Court stay	3 DC-8-62	ADC	4-30-85
11.	ARCA (Colombia)	ASNA exempt	2 DC-8-54	SAI	11-30-85
12.	Trans Global	Court stay	2 DC-8-55	SAI	11-30-85
13.	So. Pacific Island	Court stay	4 707-320	ComTran	4-30-85
14.	Samoa Airlines	ASNA exempt	1 707-351	ComTran	12-31-85
15.	Air Transport Intern	Court stay	2 DC-8-62	ADC	6-30-85
16.	National Airlines	Court stay	3 DC-8-63	ADC	12-31-85
17.	Southern Air Transport	ASNA exempt	1 707-320C	ComTran	8-31-85
18.	LAC (Colombia)	ASNA exempt	1 DC-8-54	SAI	12-31-85
19.	VARIG (Brazil)	H/C exempt	3 707-320C	ComTran	12-31-85
20.	Surinam Air (Suriname)	H/C exempt	2 DC-8-62	TNC	6-30-85
21.	LAB (Bolivia)	H/C exempt	2 707-323	ComTran	11-30-85
22.	Florida West	H/C exempt	1 707-331	ComTran	11-30-85
23.	Fair Air	H/C exempt	1 CV-880	Replacement	5-31-85
24.	Fast Air (Chile)	H/C exempt	1 707-320C	ComTran	8-31-85
25.	LAP (Paraguay)	H/C exempt	1 DC-8-63	TNC	9-30-85
			1 707-321	ATS	9-30-85
26.	Challenge Air	Court stay	1 707-330C	ComTran	4-30-85
27.	Ecuatoriana (Ecuador)	H/C exempt	2 707-300	ComTran	10-31-85
28.	TAR (Argentina)	H/C exempt	1 707-338C	ComTran	12-31-85
29.	LAN-Chile (Chile)	H/C exempt	1 707-385C	ComTran	11-30-85
30.	TAMPA (Colombia)	H/C exempt	2 707-320	ComTran	12-31-85
31.	LACSA (Costa Rica)	H/C exempt	1 DC-8-55F	SAI	9-30-85
32.	Sterling (Denmark)	H/C exempt	3 DC-8-63	ADC	12-31-85
33.	Pan Aviation	H/C exempt	1 707-321	ATS	10-31-85
34.	TransBrasil (Brazil)	Court stay	1 707-338	ATS	11-30-85
35.	Global International	H/C exempt	1 707-331C	ATS	6-30-85
36.	Aeromar (Dominican Rep)	H/C exempt	2 DC-8-54F	SAI	10-31-85
			2 720	Replacement	5-31-85
37.	AECA (Ecuador)	H/C exempt	1 DC-8-54	SAI	12-31-85
38.	ABCO	Court stay	1 707-321B	ComTran	4-30-85
39.	Independent Air	Court stay	2 707-320	ComTran	12-31-85
			2 720		
40.	Japan Air (Japan	Court stay	12 DC-8-63	none	

	OPERATOR	STATUS	AIRCRAFT	SUPPLIER	SCHEDULED DATE
41.	Skystar	Court stay	1 707-321B	ComTran	6-30-85
42.	Tradewinds (UK)	Court stay	2 707-320C	ComTran	4-30-85
43.	Worldways (Canada)	Court stay	4 DC-8-63	ADC	2-28-86
44.	Minerve (France)	Court stay	1 DC-8-62F	ADC	11-30-85
45.	Worldwide/Carefree	Court stay	3 707-331	ATS	12-31-85
			113 aircraft		

SUMMARY

AIRCRAFT TYPES	NUMBER	SUPPLIERS	STATUS OF STC
Boeing 707-100	1	ATS	in development
	3	ComTran	in development
Boeing 707-300	9	ATS	in development
	33	ComTran	issued 2-85
Boeing 720	4	none	
Douglas DC-8-50/-61	12	SAI	in development
Douglas DC-8-62/-63	16	ADC	in development
	2	AATI	in development
	20	TNC	in development
	12	none	
Convair 880	1	none	
	113		

Abbreviations:

ASNA - Aviation Safety and Noise Abatement Act of 1979
H/C - Hawkins/Chiles amendment, section 124 of Public Law 98-473
AATI - Aeronautical Acoustic Technology Inc., Palos Verdes Estates CA
ATS - Aviation Technical Support, Waco TX
TNC - The Nacelle Corporation, Waco TX
ComTran - Community Transportation Ltd., Goleta CA
SAI - Snow Aviation International, Van Nuys CA
ADC - Aeronautic Development Corp, Ltd., Amsterdam, The Netherlands

PENDING PETITIONS 0800, 5-09-85
AIRCRAFT NOISE COMPLIANCE REGULATION
(FAR 91.303)

	Petitioner (Docket)	Received	Status	AEE Draft	AGC Review	Remarks
1.	Worldwide (24019)		In AGC	Completed		Rulemaking
2.	Eagle Aviation (24020)		"	"		"
3.	Premiere (24021)		"	"		"
4.	Airmark (24022)		"	"		"
5.	Five operators (24045)		"	"		"
6.	Andes & ARCA (24072)		"	"		"
7.	Aeromar (23139)		"	"		"
8.	Belize Intern'l (24153)		"	"		"
9.	Capitol Air (24229)		Holding			Chap. 11
10.	Fast Air (24481)		In AEE			Pending
11.	BalAir AG (24580)	3-23-85	In AEE			FR 5-10-85
12.	Skystar (24578)	3-28-85	In AEE			Pending
13.	Aer Turas (24352-1)	4-04-85	In AEE			FR 4-30-85
14.	Pan Aviation (24384-1)	4-05-85	In AEE			FR 4-30-85
15.	Dallah Avco (24579)	4-08-85	In AEE			FR 5-10-85
16.	AER (23999-1)	4-10-85	In AEE			FR 4-30-85
17.	Tradewinds (23992-1)	4-29-85	In AEE			FR 5-06-85
18.	Carefree Vacations (23956)	4-29-85	In AEE			FR 5-06-85

19.	Airmark (23978-1)	4-29-85	In AEE	FR 5-06-85
20.	Arrow Air (24186-1)	5-03-85	In AEE	Pending
21.	Air Transport Intern (24338-1)	5-03-85	In AEE	Pending
22.	Zantop Intern (23996-1)	5-03-85	In AEE	Pending
23.	National Airlines (24383-1)	5-03-85	In AEE	Pending
24.	Rich International (24231-1)	5-03-85	In AEE	Pending
25.	Airlift Intern (24086-1)	5-03-85	In AEE	Pending
26.	Hawaiian (24370-1)	5-06-85	In AEE	Pending
27.	So. Pacific Island (24146-1)	5-06-85	In AEE	Pending
28.	Worldways Canada (24130-1)	5-06-85	In AEE	Pending
29.	Transbrasil (24224-1)	5-06-85	In AEE	Pending
30.	Buffalo (24289-1)	5-06-85	In AEE	
31.	Ecuatoriana (24257-1)	5-06-85	In AEE	
32.	Challenge Air Trans (23967-1)	5-06-85	In AEE	
33.	Japan Air Lines (24221-1)	5-06-85	In AEE	
34.	LAN-Chile (24372-1)	5-06-84	In AEE	
35.	Skystar (24308-1)	5-06-85	In AEE	
36.	VARIG (24350-1)	5-06-85	In AEE	
37.	Nationair (24615)		In AEE	
38.	Samoa (24421-1)		In AEE	

Mr. MINETA. In its orders before December 28, FAA recognized that Congress did not intend to have exemptions granted to carriers that acquired aircraft with knowledge of the compliance date. Let me quote to you from the FAA's order on Surinam Airways issued on August 30, 1984, "All the information available in this petition indicated that petitioner is now confronting its present difficult situation entirely as a result of its own decision to acquire aircraft that do not meet the noise rule and which cannot now be modified in time to do so. Certainly those drafting the conference report did not intend that 'financial havoc' of a petitioner's own making could justify an exemption."

The language I have quoted seems to me to be an accurate analysis of what the conference report had in mind. Yet, in the LAC order of April 26, 1985, DOT and FAA indicate that they will not give any consideration to the date on which an applicant acquired noncomplying aircraft.

Why have you changed your mind? Why don't you still believe that the conferees did not intend to have exemptions granted to noncomplying aircraft acquired on the eve of the compliance deadline?

Mr. SCOCOZZA. That carrier was looking for a blanket exemption and arguing with us that it would create financial havoc if they weren't given an exemption, but they weren't putting money down to have this hush kit done. It wasn't until a hush kit, in fact, was put together that that carrier was given a certificate.

We think putting money down is a controlling factor for determining good faith compliance. If somebody is going to put that kind of money down and put their money in an escrow account, that's a pretty good indication of somebody trying to stretch to satisfy the requirements of the Department of Transportation.

Mr. MINETA. I'm talking about financial havoc of a petitioner's own making. It has nothing to do with whether he put $500,000 down or when the aircraft was acquired.

Mr. SCOCOZZA. Congress did not intend that we should be absolutely sympathetic to someone who purchased a plane after 1980. They were given a lot more scrutiny. I don't think it was Congress' intent to absolutely exempt anybody from consideration and maybe that FAA order is improperly drafted and doesn't reflect this.

If a carrier puts money on the line and tries to demonstrate that they are willing to comply in any way they can, that is a satisfaction of good faith compliance.

Mr. MINETA. I have a whole series of specific examples. How do you want me to deal with them? I'm trying to test the factors on which you made these decisions, and I can only go by the specific applications for exemption that were before the Department prior to December 28 and after December 28, and I have nothing else to go on but those.

I can go through these—another factor which was considered in early FAA orders was fairness to the other operators which underwent great expense to comply with a deadline.

FAA noted that the petitioner had only recently acquired and commenced operations with noncomplying aircraft. FAA stated that under those circumstances, the gross unfairness to operators already in compliance or planning to be so is especially evident. To

grant relief to any operator which has acquired noncompliant aircraft at costs greatly reduced because of the imminence of the deadline and in the hope of regulatory relief, would vitiate the principles of fairness upon which the regulatory structure must be based and would unduly penalize those operators which have complied.

FAA went on to find that grants of exemption would also be unfair to persons living around airports. FAA found that the aircraft affected are mainly Boeing 707's and DC–8's, the noisiest subsonic aircraft in civil operation, as well as the furthest from compliance with stage 2 noise standards.

The many airport neighbors who live day in and day out with aircraft noise have, since 1976, awaited the time when these aircraft will be made quieter or removed from service. To grant this petition would unfairly deprive those people of some measure of aircraft noise abatement and would be inconsistent with the intend of this regulation, the Aviation Safety and Noise Abatement Act of 1979 and the aircraft noise policy announced by the Department of Transportation in 1976.

DOT and FAA in the April 26 order in the LAC case, do not discuss the issue of fairness to other operators and airport neighbors. Are you still considering this factor? Why do you now think that granting exemptions is fair to those airlines that complied and to the citizens that are being affected by noise? You may wish to respond for the record.

Mr. SCOCOZZA. The court was absolutely right. Perhaps our orders were not consistent. What we did on December 28, 1984, was consistently apply criteria throughout——

Mr. MINETA. Consistently apply an inconsistent policy.

Mr. SCOCOZZA. This is an environmental matter and we are, in fact, sensitive to the eardrums of people. There are a lot of carriers that have yet to get exemptions and will not get exemptions.

Please understand that, beyond Hawkins/Chiles, there are 55 aircraft in the air, a lot of which very clearly we would not have given exemptions. Out of the 55 aircraft that are outside of Miami, 26 of them are also Hawkins/Chiles aircraft; 7 of them are EAS carriers; that brings us to 22 planes that are in the air as a result of DOT activity outside of Miami.

Mr. MINETA. Then the court also said 50 or 60 more could stay in the air?

Mr. SCOCOZZA. The court has allowed up to——

Mr. MINETA. It's because of that very point that the Court then said that DOT screwed up, and we'll have to grant 50 or 60 more aircraft to fly in the air.

Mr. SCOCOZZA. The difference between what would be up in the air with the court decision and what would be up in the air if we had not been taken to court would be about a dozen planes primarily because several of the carriers that took us to court had already qualified for general exemption.

Mr. MINETA. About 30 or so of those 113 are a result of Hawkins/Chiles?

Mr. SCOCOZZA. Fifty.

Mr. MINETA. If you take a look at the list that was just given to Mr. Plummer, from number 19 on down through number 36, are those not the Hawkins/Chiles aircraft?

Mr. SCOCOZZA. They're all jumbled up and it's hard for me to pull them out and put them in the right perspective. If you will indulge me a couple of minutes, I will try to cross check them with my list.

Mr. MINETA. You can submit that for the record, Mr. Secretary.

[The following was received from Mr. Scocozza:]

The first 18 exemptions on the list given to Mr. Plummer are original Aircraft Noise Abatement and Safety Act actions. Numbers 19 through 36 on the list are original Hawkins/Chiles' exemptions. Those beyond 36 are under Court stays.

Mr. MINETA. I guess I was surprised and amazed by your decision that an operator will be found to be acting in good faith even if it had not signed a hush kit contract until March 29, 1985. The deadline for compliance was January 1, 1985; hush kit manufacturers were willing to sign contracts before that date. How can someone who failed to sign a contract before the deadline be found to be acting in good faith?

Mr. SCOCOZZA. That was the subject of a lot of debate at the Department. That is, why can't we pick January 1, 1985? Yet December 28, 1984 was the first indication to the public that the criteria had evolved because of Hawkins/Chiles and rethinking at DOT. I would add, Mr. Chairman, of all of the applications that were filed, we reviewed them all on our own initiative in the context of what we were doing on December 28, 1984.

We felt, in all fairness, for anyone following what the DOT has done, and to provide notice to the public they should have that extra time up to the date of the court decision that required us to reevaluate these exemptions.

I believe the effect of the March 29 cutoff date is finite because there was no big pool of carriers that all of a sudden became eligible. It involves only two or three extra carriers.

Mr. MINETA. Let me make sure I understand the conditions in the LAC order.

As I read the order, it provides that the exemption will terminate on November 30, 1985, if the hush kit manufacturer with whom LAC has a contract fails to receive FAA certification for its hush kits by September 30, 1985, and if LAC is unable to enter into a hush kit contract with another manufacturer which obtained a certificate by September 30, 1985.

Do you agree with my interpretation that if these two contingencies occur, LAC's exemption will terminate?

Mr. SCOCOZZA. Yes, Mr. Chairman.

Mr. MINETA. In other words, if no hush kit manufacturer gets certified for the type of aircraft operated by LAC by September 30, 1985, LAC will not be allowed to operate beyond November 30, 1985. Is this correct?

Mr. SCOCOZZA. December 31, Mr. Chairman.

These carriers have exemptions to operate for the most part until December 31. They are on notice that, if they are holding an exemption from a hush kit manufacturer who, by September 30, 1985, is not certificated, they had better find a contract with a cer-

tificated hush kit manufacturer or they will not be extended into 1986.

It will be terminated on December 31, 1985.

Mr. MINETA. What happens if there is no certificated hush kit manufacturer?

Mr. SCOCOZZA. It's over. That is the case with many of the Hawkins/Chiles carriers, Mr. Chairman.

Mr. MINETA. Can we have your assurance on that?

Mr. SCOCOZZA. That is our position on that, Mr. Chairman.

Mr. MINETA. When they come in on the 30th of November asking for an extension——

Mr. SCOCOZZA. I'm sure they will do that and they are very good at it. They have had a whole year of practice. I hope that carriers will realize——

Mr. MINETA. I'm trying to get the DOT to realize this, not the carriers.

Mr. SCOCOZZA. That is our position and why we felt it important to put in the LAC decision to make sure that all contingencies are taken care of. They may take a chance on a manufacturer, but if they are not compliant by December 31, 1985, they sit on the ground.

Mr. MINETA. Do you have the same intention with respect to the Hawkins/Chiles exemptions?

Mr. SCOCOZZA. Doubly so. These are carriers that have alternative compliant aircraft in their fleets. I really question whether or not the Hawkins/Chiles carriers would be granted an extension in 1986. It's a different situation because those carriers would never have gotten an exemption from the Department of Transportation in the first place.

Hawkins/Chiles also provides for extensions of those exemptions. No one else can qualify to get an exemption under Hawkins/Chiles, but Hawkins/Chiles is still alive for the purposes of determining criteria for an extension within 1986 and that is a judgment call the DOT will have to make.

Mr. PLUMMER. The only conceivable Hawkins/Chiles extensions beyond January 1, 1986, are for those that hold exemptions and have a hush kit contract with a manufacturer who, before December 31, 1985, obtained his supplemental type certificate from the FAA. Then it's discretionary with the Secretary whether or not to extend those.

Mr. MINETA. Is that date December 31 or September 30?

Mr. PLUMMER. The date of September 30 is unrelated to Hawkins/Chiles exemptions and only applies to the groundrules and the explanation of the criteria that are contained in the LAC decision. That only pertains to the exercise of the FAA's general exemption authority.

Mr. MINETA. How will this be enforced, and what penalties will be assessed against violators?

Mr. SCOCOZZA. Mr. Chairman, with respect to when a carrier can operate, they are under strict operating restrictions and they have to send reports to DOT, of which they are very critical. The FAA's tower personnel have a safety responsibility and do not attempt to report.

I can assure you that other carriers will call when a carrier attempts to land who doesn't have a slot. That has been the case at several airports. The industry is the best policeman.

Mr. MINETA. You're just relying on self-compliance and snitches?

Mr. SCOCOZZA. Some of the monitoring situations would almost require manifests from the company, which is what we do care for, and we have to audit what that carrier did. If the carrier violates the number of times it is permitted to enter U.S. airspace, then we would enforce that.

Mr. MINETA. We do have a call of the House for a vote and we will recess for 15 minutes at this time.

[Recess taken.]

Mr. MINETA. The subcommittee will reconvene. Mr. Plummer was about to respond.

Mr. PLUMMER. This is responding to your question about the methods of enforcing these nighttime noise restrictions. If the operator does not comply with the nighttime restriction, then they are operating outside of their exemption and they would be in violation of 91.303 of the Federal Aviation Regulations.

Mr. MINETA. How do you know that they are outside of compliance?

Mr. PLUMMER. The methods for investigating violations range from the review of the records of the carrier, which are open to the inspectors to tower records which would show the arrival or departure times of the operators. Also there are complaints from irate citizens and competitors and from airport operators who are concerned about their own noise problems.

I think these are all the normal investigative techniques that are used whenever there is any violation.

In terms of sanctions, there is the Federal Aviation Act which provides for a civil penalty of $1,000 for each violation. A landing during the period of the noise restriction would be a violation; a takeoff would be another violation.

If you had an arrival and a subsequent departure, that's two violations.

We would also look at patterns of violations. Should we find an operator who violated the nighttime noise restrictions on a routine basis or over a significant period of time, then another potential sanction would be to suspend or revoke the air carrier operating certificate of that operator.

The sanctions available are quite sufficient to enforce this particular provision of the exemption.

Mr. DEAN. Seizure is an option, and we have already seized one aircraft for violation of the noise rules.

Mr. SCOCOZZA. There was a situation where someone flew into the United States without an exemption and the aircraft was seized.

Mr. MINETA. Wasn't there a situation where the person kept flying in and out of the United States?

Mr. SCOCOZZA. They were seized on the third occurrence. It was a foreign carrier and they were extended a warning and then they continued. The aircraft itself was seized, resulting in a tremendous amount of financial loss for the period that we held it.

Mr. PLUMMER. In the final analysis, that operator was also subjected to a civil penalty which covered all of the violations he had committed. I think it was $5,000.

There was a second situation where we had information that a particular operator with no exemption was proposing to conduct an operation to the United States, and we were able to bring to their attention the potential sanctions and were able to convince them that they should not operate.

Mr. MINETA. Fine. Thank you very much. Mr. Gingrich?

Mr. GINGRICH. Thank you, Mr. Chairman. I just wanted to mention that it may well be worth our time to ask DOT to do a survey sometime in early 1986 and to report to us on who owns twin engine aircraft that are going to be covered in 1988 and where are they at in contracting and what steps should Congress take in 1986 in order to insure that we don't end up in the same kind of bottleneck that we had in this cycle.

Mr. MINETA. Thank you.

Mr. SCOCOZZA. Mr. Chairman, we would certainly like to send you status reports on the twin-engine aircraft on a regular basis. We would be delighted to work that out with your staff.

There are 368 twin-engine aircraft that are operating under exemption by the original carriers that were given those exemptions. If those carriers sell those plans or transfer them, the new owner has to have them retrofitted immediately. So long as they continue to hold them, they are able to operate them under exemption to 1988, and those planes number 368 as of this date.

If we are able to do it quickly on a per-carrier basis, we might have a problem. Mr. Plummer advises that we might be able to do that as well. We would be happy to help.

Mr. MINETA. That would be helpful. Thank you.

I appreciate very much your being before the committee. This has been an important subject area. We don't take the issue lightly, and we want to make sure that the airline industry, as well as the Department, are all on notice. We have domestic carriers who have spent hundreds of millions of dollars to comply with this and to have it administered in this way becomes a big disappointment and a serious case for examination.

Again, I appreciate very much your forebearance and patience as we wrestle over these issues.

Mr. SCOCOZZA. Thank you for affording us the time. I would like to make one mention of an action for the record. The Department of Transportation took an action this week in respect to a carrier called Aeromar who asked for a wet lease exemption. We signed an order which turned down the wet lease because the subject of that wet lease was a noncompliant aircraft.

We're not only looking at it from the ASNA context, we are also looking at it from our general exemption authority under the authority we inherited from the Civil Aeronautics Board.

I would like to express my appreciation for the Department of Transportation's ability to be here today to help you understand what we've been going through and how distasteful so much of it has been to us.

We certainly appreciate your help and coordination and work with us to come to a timely resolution of this issue.

Mr. MINETA. Thank you. As I recall, there will be some things that you will be submitting for the record.

Mr. SCOCOZZA. Yes, Mr. Chairman.

Mr. MINETA. Great. Thank you very much, Mr. Secretary.

At this time, I would like to call up the panel made up of Mr. Norm Philion, Mr. Donald P. Hettermann, and Mr. Edward J. Driscoll.

I would like to announce that we will only have time to complete this panel this afternoon. Further hearings will be conducted and the balance of today's agenda will be rescheduled for that additional hearing.

Mr. Philion, we have your testimony; please go ahead and proceed in your own fashion.

TESTIMONY OF NORMAN J. PHILION, PRESIDENT, AIR TRANSPORT ASSOCIATION; DONALD P. HETTERMANN, SENIOR VICE PRESIDENT-TECHNICAL OPERATIONS, DELTA AIR LINES, INC., ACCOMPANIED BY GERALD M. MAYO, GENERAL ATTORNEY; AND EDWARD J. DRISCOLL, PRESIDENT, NATIONAL AIR CARRIER ASSOCIATION, ACCOMPANIED BY JEFFREY A. MANLEY, COUNSEL, TRANSAMERICAN AIRLINES

Mr. PHILION. Thank you, Mr. Chairman. That prepared statement which you've been kind enough to put in the record reflects the dismay and the concern of the airline industry about the actions of FAA since last December on the noise compliance rule.

With your permission, I will briefly summarize airline concerns and the possible consequences of those FAA actions. Let me begin with a few observations.

First, I think it's reasonably clear that Federal policy on noise exemptions has, in fact, changed. It's reasonably clear that the policy change was made without notice or the opportunity for public input. There is no doubt that FAA's exemption actions since December 28 have been completely inconsistent with the rulings prior to that date.

No explanation has been given as to the reasons for either the inconsistent application of the standards or the sudden change in policy which virtually destroys those standards.

I suggest the underlying question remains why. Was it because of the Hawkins/Chiles amendment, or because of the March 29 action of the court, or were there other reasons. We heard this afternoon some discussion of the hush kit problem. As bad as it was, the Hawkins/Chiles amendment did not suggest the need for or require a policy change. It did not. Nor did the court. As a matter of fact, there was no reason for the court to act at all except for the obvious inconsistencies of FAA.

Rather than being required by the opinion of the Appeals Court, the policy change announced by FAA on April 26 is itself at odds with the court's demand that, "FAA act upon the petitions in a consistent manner and that any deviation from prior rulings be carefully reasoned and explained."

I don't think we still have been given a reasoned explanation of this deviation and I suspect that more litigation is almost bound to follow.

Those who were denied exemptions prior to December 28, probably are going to go back to court. They have reason to.

Notwithstanding the time pressure arising from the court action, there was sufficient time between the date of that action and the date FAA announced its new policy to permit public participation. FAA has not been particularly shy in the past in calling for public comment on short notice or even holding public hearings on proposed policy changes with just a few days advance notice.

There is no defense for acting on such an important issue without notice and without giving the interested parties the opportunity to express their views.

It should be noted that several of the groups represented here today made a specific request to be heard on this matter right after the court decision in a communication to FAA and the Secretary dated April 4.

We also filed on April 30 our very strong protest about the new policy, urged an opportunity for comment, and urged that the new policy be withdrawn. Neither communication has been acknowledged.

Our airline members have acquired over 800 new technology aircraft meeting the Federal noise standards, with another 400 on order having a value of $28 billion. While some of these new higher cost aircraft were needed to meet growth, most were for replacing the aircraft which were retired prematurely.

Whatever the reason for their acquisition, the heavy expense involved was necessitated by the technological costs of the Federal noise rule.

We have a greater concern, Mr. Chairman, that the erratic behavior and vacillation of FAA since December, together with the April 26 policy announcement, is bound to shake public confidence in the Federal Government's commitment to aircraft noise abatement.

If this leads to efforts by a local authority to fill the void, we will all be in serious trouble since it could result in a series of individual local rules conflicting with one another that could cripple the national air transportation system.

We see no evidence that either DOT or FAA gave any consideration to the possible effects of recent FAA actions on the viability of the Federal source rule itself or to the potential damage that might be caused to the system by a multiplicity of substitute local restrictions.

The most obvious course of action is for FAA to withdraw its new policy, to make no other policy changes without full public participation, and to grant no exemptions based on standards which differ from those applied prior to December 28.

Unless some other immediate steps are taken, the noncompliance of aircraft will grow. As we read the new policy, noncompliance can go on almost indefinitely so long as a hush kit contract was signed before March 29.

This dramatizes the immediate need for Congress to insist that FAA impose an absolute cutoff date for the operation of noncomplying aircraft and stick with it. Let me quote from FAA's April 26 policy statement in this regard:

If hush kits from a substitute supplier cannot be installed until after December 31, 1985, these exemption holders will be able to continue operations under their exemptions until the earliest available installation date after December 31, 1985.

That concludes my comments, Mr. Chairman. Thank you.

Mr. MINETA. Mr. Hettermann, it's good to see you, and it's great to have you here. You may go ahead and proceed in your own fashion.

Mr. HETTERMANN. Thank you, Mr. Chairman. My name is Donald P. Hetterman. I am senior vice president-Technical Operations for Delta Air Lines, Inc. I am accompanied today by Mr. Jerry Mayo, Delta's General Attorney, who has worked in the legal area of this noise matter for a number of years.

My background and experience with Delta, after three years in the U.S. Air Force, includes 39 years in Maintenance, Engineering, and other Technical aspects of the airline operation to improve air transportation. I have submitted my prepared testimony, however, rather than now reading that statement in its entirety, I would like to focus on the context of this matter, highlight certain of Delta's concerns, and then respond to your questions. I also want to commend you, Mr. Chairman, for your active and forceful leadership on this issue and to express my appreciation for this opportunity to testify.

American business in general and large corporations in particular are frequently criticized by the various branches of government and the public for not addressing in a prompt and responsible manner serious issues of public concern. Aircraft noise represents an issue of concern generating public protest, litigation, congressional hearings, and regulatory activity. After a difficult process which led to the enactment of the phased compliance procedure, responsible operators exerted the effort to meet the deadlines. Delta is proud of the fact that it was among the first of the major operators to bring our fleet of 221 aircraft in compliance one year before the deadline although we had to accomplish a substantial modification program.

Sadly, the compliance scheme has been tossed out the window by irresponsible fringe operators and Government regulators. This abrupt turnabout is most unfair to the millions of our citizens who have relied on this program to provide substantial relief from aircraft noise near airports.

It is also patently unfair to the operators such as Delta which spent hundreds of millions of dollars with the expectation that their competitors would not be accorded cost advantage by being excused from compliance.

Delta remains committed to a position of leadership in the airline industry in adopting improvements in the efficiency, safety, and environmental acceptability of its equipment.

We and other operators, however, must be able to rely on consistent and equitable treatment by the regulators. If a new regulatory safety or environmental standard is justified, Delta is willing to pay the cost, but only with the unswerving assurance that its competitors will have to meet the same requirement.

The remainder of my comments will highlight the events of the past year, during which time the Secretary of Transportation and the Administrator, who publicly maintained on frequent occasions

that they would rigidly enforce the noise compliance deadline, have totally reversed course.

The U.S. Court of Appeals for the District of Columbia had serious problems with the FAA's erratic treatment of the exemption and, as a result, stayed enforcement of the noise law with respect to a large number of operators. In a strange response to the court's directive, the Secretary and the Administrator have announced their intent to adopt a liberal exemption policy that would grant a waiver to virtually any applicant and render the noise laws meaningless.

I refer, of course, to the order issued by the FAA on April 26, 1985. That order clearly represents an incredible and fundamental shift in FAA policy, apparently dictated by the DOT. Rather than recite Delta's legal challenge to the order, I refer you to the recently filed motion of Delta, American, and Transamerica airlines with the court which we have made available to you.

Notwithstanding the legal deficiencies of the order, the revised policy represents a serious erosion of the Federal noise abatement policy established in 1976. In 6 short months, the FAA has gone from rigid adherence to the compliance date to virtually abolishing the requirements.

We stand indignant in this betrayal, baffled that we could have been required to commit such immense expenditures only to discover that our Government was unwilling to stand by its word.

While Delta recognizes your personal efforts, Mr. Chairman, we do not hold Congress blameless. Congressional enactment of a loophole last fall permitting the Miami/Bangor Airport exemptions was used by the Department of Transportation and the FAA as some justification for further regulatory abdication.

If, as the FAA seems to think, the new lenient policy is the correct one, how does the FAA explain all of the efforts that went into the compliance with the law by the responsible operators? Delta alone spent over $150 million complying with that law.

Now that the FAA, in effect, is eliminating the requirement to comply, will it compensate Delta and other responsible operators for their expenditures and what of the reliance of the millions of U.S. citizens who live near airports and who rightly expect the Government would enforce a law passed by Congress to provide relief from aircraft noise.

There is another aspect of this abrupt reversal that may not yet have occurred to the Secretary and the Administrator but which could substantially impair their agencies' effectiveness in coming years. In fact because of the effect of the new noise policy is to punish the responsible and reward the delinquent, both agencies are losing credibility with our industry.

As you know, the FAA is considering a number of important aircraft interior and other safety matters which have been proposed in rulemaking form. We in the industry are now asking ourselves:

Will the FAA implement and enforce such requirements in the same way that it enforced the noise regulations?

Will the operator which diligently complies be subjected to competition from Laggards possessing FAA exemptions and free of the burden of compliance?

Will there again be eleventh hour pressure on DOT from the fringe operators, new entrants and smaller carriers not to enforce the new regulations?

And, as an issue most pertinent to this debate, Mr. Chairman, will the FAA similarly gut the requirement that twin engine jet aircraft meet applicable noise standards by January 1, 1988? These questions are of genuine concern to the industry and to us at Delta and we are now openly skeptical of FAA's sincerity and ability to enforce its regulations in a fair and even-handed manner.

I would like now to turn to a discussion of specific portions of the FAA's new policy with which Delta takes strong exception.

PUBLIC COMMENT AND FAA SCRUTINY

During 1984 when exemption requests by the dozens were pouring into the FAA, Delta attempted to respond to every application with comments containing both Delta's general position and specific comments relating to each applicant.

Subsequently, Delta discovered that FAA was encouraging and responding to supplementary filings by applicants without notice or an opportunity to comment.

A number of FAA exemptions were granted on the basis of essential covert supplemental information.

AVAILABILITY OF TECHNOLOGY

Delta takes strong exception to the petitioner's assertion concerning availability of technology in two respects: first, with respect to the DC-8-60 series aircraft, compliance technology has been available for a number of years and is economically feasible.

Delta entered into a contract to reengine its DC-8-61 aircraft way back in 1979 and the CAMMACORP reengining has been used to meet the compliance deadline by Delta, United, Transamerica, Air Canada, UPS, Emery, Evergreen and have, in fact, contracted for reengining of a total of over 120 aircraft. It is also important to note that this technology turns a stage I aircraft into a stage III aircraft, which meets today's most rigorous noise standards. In contrast, the hush-kits to be acquired by delinquent operators barely meet the older stage II standards.

Both the CAMMACORP reengining and various hush-kit options were offered to the industry on more than one occasion in the late 1970's, both for other model DC-8 aircraft and for various model Boeing 707 aircraft. As a factual matter, the FAA cannot demonstrate that the technology necessary to achieve compliance by January 1, 1985 has not been available.

GOOD FAITH

Prior to November, 1984, the FAA expressed considerable skepticism as to the good faith of operators which acquired noncomplying aircraft in the previous months. Incredibly, the FAA now thinks that an operator which acquired a noncomplying aircraft in December 1984, with full knowledge that there was no way that that aircraft could be brought into compliance by January 1 deadline, can

demonstrate good faith. If that is the case, the term has lost its meaning.

Even more incredible, the FAA now says that an operator can demonstrate good faith by contracting for a hush kit as late as March 29, 1985—3 months after the compliance date. The FAA has provided no explanation for its new minimal standard for determining good faith.

FINANCIAL HARM

The FAA's new policy contains revised standards of revenue loss which appear to have been carefully designed to afford maximum relief to all applicants.

In reviewing the propriety of the FAA's criterion, the Subcommittee must keep in mind that we are dealing in most cases with what the FAA's orders of a year ago clearly referred to as "self-inflicted harm," that is, where the operator bought cheap, noncomplying aircraft. Any harm it would suffer as the result of denial of its exemption application would be caused by its own negligence and not by government action.

VALUABLE SERVICE

Perhaps most astonishing of all, the FAA now proposes to eliminate the valuable service criteria by holding that any operator provides valuable service.

As you have already noted, Mr. Chairman, had Congress meant not to require an evaluation, it would not have suggested the criterion. The FAA now clearly attaches no significance whatever to the adjective "valuable."

UNFAIRNESS

Prior to November, 1984, the FAA had frequently observed that granting of exemptions would be unfair to responsible, complying operators. In denying an initial request of Ports of Call, in 1983, the FAA said:

> • • • All operators of affected aircraft have had to pay the cost of compliance. Considering all these operators who have acted in good faith and expended considerable funds toward compliance with the new operating noise limits, the petitioner's request for relief from financial burden cannot be distinguished from the circumstances of other operators of non-complying aircraft who have chosen to spend the funds necessary for compliance.

One year later, the FAA has forgotten all about this irrefutable argument.

Finally, I want to express our deep concern over the effect the policy of airport restrictions is having on the proliferation of local operating restrictions.

As you know, the preemption of such restrictions was the principal concern leading up to the development of noise abatement programs. In the current absence of strict FAA enforcement, local airports are scurrying to enact and enforce ordinances and rules to limit the operation of noisier aircraft in an understandable effort to protect their constituents.

Unfortunately, these efforts tend to prompt less well intentioned endeavors to restrict operation of other aircraft, thus having a det-

rimental impact on interstate commerce and creating additional access constraints at congested and noise sensitive airports.

The FAA's abrogation of its statutory responsibility to enforce the noise laws in general, and the January 1, 1985 compliance date in particular, is obvious. In order to restore the trust of the public and the industry and to achieve the benefits that Congress sought through its noise laws, Delta sincerely urges this subcommittee to demand that the FAA implement a policy requiring immediate compliance with the required FAR part 91(E) noise standards and swift and consistent denials of pending exemption application in accordance with that directive.

If the FAA and DOT does not take such action, Congress must legislate such action in clear and unequivocal terms.

The U.S. Court of Appeals has denied our motion as of this morning. This means that the FAA has a free hand to continue to pursue their new liberalized policy absent Congressional intervention.

We are fearful the FAA will hand out more unwarranted exemptions and relief promised by Congress to airport communities will not be realized.

I thank you.

Mr. MINETA. Thank you very much, Mr. Hettermann. Mr. Driscoll, your full statement will be made part of the record. Please proceed.

Mr. DRISCOLL. Thank you, Mr. Chairman. I am accompanied by Jeff Manley who is counsel for Transamerica Airlines.

We are pleased, Mr. Chairman, to have this opportunity to express our concern as well as our frustration in connection with the grant of exemptions from part 91 of the Federal aviation regulations as amended, and the provision of the Noise Abatement Act of 1979.

After listening to the testimony of Matt Scocozza, our frustration continues. If what I heard is correct, Matt is saying that Hawkins/Chiles bill was enacted by the Congress with respect to Bangor and Miami and limited to those two airports. But, DOT, under its general exemption powers, extended the provisions of that bill to all other airports throughout the United States insofar as the carriers who have obtained exemptions are concerned. Great stress was made by him on the fact that 50 of the exemptions would have issued anyway under the Hawkins/Chiles bill. If they had issued under that, they would have been restricted to Miami and Bangor. Some of those 50 aircraft are operating into and out of other airports. This is not what the Congress intended.

I will not burden the committee with a detailed account of the actions of DOT/FAA which led up to this as this committee is well aware of the background including the public statements of assured conformance to the criteria contained in the conference report covering the Noise Abatement Act of 1979 as well as the deviations from the policy that have occurred since December 1984.

These five criteria, as the committee knows, are small carrier status; good faith compliance; delay in technology; financial havoc; and valuable airline service.

The five criteria enumerated above and the end date, December 31, 1984 according to the conference report on the Noise Abate-

ment Act were to be "the final resolution on this issue, except for extraordinary and unanticipated circumstances." DOT/FAA officials affirmed in public statements that the Department was going to be guided by and would apply these five criteria in determining whether a carrier was entitled to an exemption. It was specifically stated that "the unavailability of 'hush kits' cannot alone justify an exemption unless the carrier has also made a good faith effort to comply, and an economic hardship and a loss of valuable public service would result if the exemption was not issued."

Mr. Chairman, my office, as well as that of many of the carriers, followed the matter of exemptions very closely and up until December 27, even though we heard rumors to the contrary, we were assured by DOT officials that there was to be no change in policy and that "few, if any of the exemptions, would issue." Then, on December 28 the DOT/FAA changed their position without notice to industry and began the grant of broad exemptions even though the carrier did not meet the five criteria. That resulted in the grant of exemptions to some carriers by applying criteria on an inconsistent basis. Some carriers, objecting to broad exemption relief by DOT/FAA, appealed to the court.

The court, as you know, after detailed analysis of the handling of the exemption process and the application of the criteria, found the FAA to be totally inconsistent and remanded the matter to the FAA for reconsideration and for consistent handling. The court found that the agency had failed to provide any rationale for its change in policy or the application of differing criteria to individual cases concluding that the inconsistent approach was a shell game. The court in its order or remand noted: "We must insist, however, that the FAA act upon the petitions in a consistent manner and that any deviation from prior rulings be carefully reasoned and fully explained." The FAA has failed to follow the guidance of the court as it has failed to follow the guidance of the Congress.

Mr. Chairman, the shell game continues. In its latest order on April 26, the FAA granted an exemption to LAC. In that exemption order, it sets forth a policy statement to govern all future exemptions. And again, without a reasoned and fully explained approach, applied the five criteria set forth in the referred to conference report but interpreted these five criteria differently than before but in such a manner that they are relatively meaningless.

The handling, Mr. Chairman, of this matter by the DOT/FAA raises three issues: Credibility of an agency; fairness; and economic harm.

CREDIBILITY

After almost the entire industry complied with the mandate set forth in the Noise Abatement Act of 1979 and the FAR; and after repeated assurances that the agency and DOT would be governed by the Congressional mandate; the DOT/FAA without notice and with no rationale whatsoever, completely scuttled the applicability of the five criteria which they had assured the industry they would be guided by and in a somewhat cavalier manner, issued exemption after exemption, applying different standards, but nevertheless,

permitting continued use of noncompliant aircraft by those carriers who had not complied with the law or the rules.

FAIRNESS

The administration in its application of the noise rule since December 28, has not been fair to the entire industry that spent billions of dollars in the acquisition of compliant aircraft, as well as, reengining noncompliant aircraft. DOT/FAA has not been fair in the application of reasoned criteria in the grant of exemptions.

ECONOMIC HARM

I have already alluded to the fact that economic harm is resulting from the operation of the noncompliant aircraft. Carriers who have invested substantially in new or reengined equipment must recover the cost of that compliance.

Mr. Chairman, we in the industry who have faithfully complied with the Noise Abatement Act of 1979 and the FARs should not be abandoned. The public is entitled to reduced levels of noise and should not continue to be subjected to unacceptable levels in order to give benefits to operators who, through their own fault, have failed to comply.

We hope your committee will take timely and appropriate action.

Thank you, Mr. Chairman.

Mr. MINETA. Thank you very much, Mr. Driscoll. Let me thank the members of the panel for their complete testimony and their summary statements.

It's been argued that DOT and FAA not give weight to the sums spent by air carriers which are in compliance because the real motivation for spending these sums was to obtain fuel-efficient aircraft which are less expensive to operate.

Was this a factor in your compliance decisions and, if so, does it destroy the argument that the grant of exemptions is unfair to carriers which have complied?

Mr. PHILION. We were required by the law and the regulations to comply with the noise rules and we did so. As a matter of fact, some of the steps taken in the retrofit area added to the cost of fuel.

New technology aircraft are certainly more fuel efficient, but when you think of the aircraft that had to be retired prematurely, the cost of that lost investment outweighed any fuel efficiency for those particular replacement aircraft.

Mr. MINETA. In talking about the 800 new high-technology aircraft, are you referring to the stage 3 aircraft?

Mr. PHILION. Some were stage 2, but most were stage 3.

Mr. MINETA. Mr. Hettermann, was fuel savings a factor in Delta's decision to re-engine their DC-8 aircraft?

Mr. HETTERMANN. Certainly, cost of fuel was an influencing factor along with savings that could be achieved with the modified type aircraft and we have achieved a 20 percent fuel savings.

However, had there not been a law requiring the modification to meet noise standards, we would have preferred to reserve those funds to purchase new aircraft rather than reworking the older aircraft.

To say you could recover the total expenditure by fuel savings would certainly not be true.

Mr. MINETA. DOT stated that it made a judgment call to grant exemptions when it discovered that holding to the compliance deadlines could put carriers into bankruptcy. Do you think this was a valid basis for exemptions?

Mr. DRISCOLL. What I know of the facts I do not. Many of the exemptions granted were to carriers who had acquired aircraft with due notice that unless they were brought into compliance by December 31, 1984 they could not operate.

People gambled and bought aircraft at distress prices in the hopes that they would get an exemption. They were told time and again that they wouldn't. Placing a carrier into bankruptcy at that point is something of its own making and the Department and the FAA, up until that famous December 28, had, in their reasoned orders and their public statements, stated that self-induced financial problems were not an excuse.

In fact, in one of the statements attributed to Mr. Burnley, he also stated that a contract for just the hush kit was not sufficient. You had the five criteria to comply with.

Mr. MINETA. Mr. Hettermann, given your extensive experience with technical and engineering aspects of commercial aircraft, are you aware the certification efforts of hush kit manufacturers that have signed contracts to install kits for noncompliant operators—I wonder whether these suppliers will be able to obtain their type certification and complete modification work for contracts signed for delivery during 1985.

Mr. HETTERMANN. Mr. Chairman, it's well recognized as to the length of time that is required for certificating new aircraft. From the time that a specification is developed for the type of aircraft desired, design, material procurement, production, and testing normally requires 5 years for aircraft FAA certification. When you reengine, it takes FAA approximately 1 year. If one looks at hush-kit manufacturing, certainly there is leadtime involved.

First, somebody has to design that hush-kit, then you have leadtimes on obtaining the materials that are required to stuff the inlet and exhaust of the engine and finally the aircraft must go through a flight test certification process. We have great concern about those FAA certification processes that there might be an attempt to shortcut critical areas.

Delta did go on record with the Administrator expressing our concern in the area of certification, and he did respond that hush-kitted aircraft would be certified in accordance with the regulations and we certainly hope that would happen.

It does appear the length of time to obtain certified aircraft with hush-kits is a very short timeframe based on the knowledge available to us.

Mr. PHILION. As you know, the petition mill is still grinding. We are now responding to 28 new petitions within the last few days and we only have 10 days to deal with them.

In some of these filings, there are requests to extend the time granted in prior exemptions because of a slippage in the Hush Kit Development Program.

That is what we are concerned about. We see this extending out indefinitely.

Mr. MINETA. Mr. Gingrich?

Mr. GINGRICH. Mr. Driscoll, do you know of any cases where one of the current airlines that is applying for an exemption literally bought an airplane which was sold at distress or sold by an airline that thought that plane would not be exemptible?

Mr. DRISCOLL. Yes, I think I do, but I think Mr. Manley can give you examples.

I believe Buffalo acquired an airplane and I believe Arrow and there were others.

Mr. MANLEY. I don't have the list in front of me, but I think that the chairman cited one earlier today which is still acquiring non-compliant airplanes and is seeking exemptions right now before the FAA to operate these planes which it acquired long after the first of the year.

Mr. GINGRICH. My understanding is that DOT has a March 29 cutoff and you cannot apply for exemptions for aircraft acquired after that date.

Mr. MANLEY. Some people are still applying for exemptions for airplanes which they have contracted for after that date claiming that they didn't have the notice.

Mr. GINGRICH. If you could submit examples for the record with a stream of behavior in this matter, I think it would be a helpful item for the record.

[The following was received for the record from Mr. Manley:]

BURWELL, HANSEN, MANLEY & PETERS,
Washington, DC, June 5, 1985.

Re Hearings on DOT and FAA policies on exemptions from aircraft noise emmission regulations.

Hon. NEWT GINGRICH,
House of Representatives, Committee on Public Works and Transportation, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN GINGRICH: At the May 22, 1985, hearings you asked if we could identify a stream of ownership where a carrier presently seeking an exemption from noise abatement rules had acquired its aircraft from a carrier or carriers that assumed such aircraft could not be operated after December 31, 1984. A definitive answer to your inquiry is not possible because it involves subjective judgment on our part into the intention of the seller of the noncompliant aircraft. However, to the extent that data are available we have identified below instances where such a stream of noncompliant behavior appears to have taken place.

Publicly-available data for aircraft ownership are incomplete. We have used the information contained on the list entitled "Current Operators With Non-Noise Complying Four-Engine Aircraft" prepared by the FAA and distributed at the May 22, 1985, hearing. Comparing that list with information in the report entitled AVMARK, *Commercial Aircraft Fleets* as of November 1, 1984, the following conclusions can be drawn regarding the stream of ownership:[1]

1. Arrow Air has one of the largest noncompliant fleets and continues to seek exemption authority to operate them. Of the seven (7) DC-8-62 aircraft for which Arrow seeks exemption, six (6) appear to have come from the fleet of United Airlines and the seventh from Braniff's. The aircraft were acquired during 1982-84. Arrow's DC-8-63 aircraft came from a variety of sources during the same period.

2. Hawaiian and Rich International are operating a total of 5 DC-8-62 aircraft which came from Braniff's fleet.

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[1]It should be noted that because the AVMARK report does not identify aircraft by registration or serial number, the conclusions herein as to whether the aircraft discussed in this letter are the aircraft actually being exempted must be tentative and can be verified only by asking the operating carrier to provide the source of exempted aircraft.

3. Ports of Call Travel Club is seeking to continue operating eight (8) B-707 aircraft most of which came from the fleet of American Airlines and were acquired in 1980-84.

4. Airlift seeks to operate three (3) DC-8-54 aircraft which it acquired from Eastern Air Lines during 1983.

5. Worldwide Airlines in 1984 acquired three (3) B-707's which came from the fleet of TWA. Worldwide is seeking to operate all three aircraft even though it has contracted for a hush kit on only one of them.

We have no information on the prices paid for these aircraft but believe them to have been acquired at distress prices. The selling carriers were all under the December 31, 1984, deadline when they sold these aircraft. Whether they would have sold them at the prices finally agreed (or whether they would have sold them at all) if they could have anticipated exemptions is doubtful, but an answer to that question can be sought more appropriately from those carriers themselves.

At least one carrier traded in a substantial fleet of noncompliant B-707 aircraft to acquire compliant aircraft on the strength of the FAA's insistence that there would be no exemptions. This involved the sale by American Trans Air to Boeing of its eight (8) B-707's in connection with the purchase from Boeing of noise-compliant L-1011 and B-727 aircraft. According to information filed with the FAA, the eight (8) B-707's were sold to Boeing for a total price of $10.7 million, an average price of $1.3 million per aircraft.

I hope that this is responsive to your question. Please do not hesitate to ask if you need any further information regarding this stream of noncompliant behavior.

Sincerely,

JEFFREY A. MANLEY,
Attorney for Transamerica Airlines, Inc.

Mr. GINGRICH. One of the frustrations I've had has been watching Delta fighting this fight and the money you have had to expend to comply.

If the manufacturers already don't have contracts let for certain materials and components, they literally cannot get those materials rapidly enough to meet a schedule such as the Secretary was describing earlier?

Mr. HETTERMANN. Yes, I would say it would be questionable as to whether or not they could meet the requirements unless they have already let contracts for the materials and laid down a Flight Test Program.

Mr. GINGRICH. I am going to ask that we ask our staff to request of DOT that they look into and provide us with a projected management flow for the companies that are making the hush kits and the testing of them. I think we ought to find out in the next few weeks if those companies have anything like a realistic capability of maintaining the pace that was testified to earlier today. Do they have the things on order and do they have a flight test pattern?

If that seems to be a reasonable request, I would like to ask the chairman to approve it.

Mr. MINETA. I think it's reasonable, and I think we ought to pursue that. I'm afraid that these people will be coming in for an extension at some point. That's why I wanted to make sure that those dates would be adhered to.

Mr. GINGRICH. It does seem to me that the Secretary who testified here today is trying to manage a rather rapid process of playing catchup with a group of people who did not meet their good citizenship requirements.

I will propose, depending upon what we determine in talking to the hush kit manufacturers, we may at some point want to ask the Secretary and possible Secretary Dole to come back down and ex-

plain whether or not they are living in a fantasy world in terms of trying to stay on schedule and be fairly tough about it.

We frankly, I think, got mugged. We were taken to the cleaners on a specific issue because I think it got to be sort of a camaraderie thing in the other body and they thought why not. I don't think it ever got portrayed accurately and I think your statements are pretty powerful in that direction.

I would just appeal to all of you to go back and say to your colleagues that we very badly need your help in making sure that the average member of this institution understands a responsible government/industry relationship standpoint.

There's a Phil Gramm rule that he coined in 1981 that those people who have a direct immediate interest are about 100 times as powerful as those people who have a vague general interest.

The folks who understand what they are going to get if they win have a real reason to have all of their lobbyists here at 3 in the morning. I think that we got taken to the cleaners, in part, last fall because the folks who saw what they could get away with had a lot higher incentive to get away with it than the folks who have been obeying the rules and playing the game correctly had to block it.

I think sometime this summer we may need your help in doing something but we can't do that unless it's very clear that this is an issue that is a noise, public health, and reasonably regulated aviation industry issue—not just a local jobs issue.

I thank all five of you for coming up and for testifying and for helping set the stage for what is probably going to be an ongoing struggle for a few months.

Mr. PHILION. The fact is, however, that we've got to find a way to persuade DOT and FAA that the Hawkins/Chiles amendment did not require them to do what they're doing.

We can fight that fight over again and that is 55 airplanes. There's another 55 coming and we have got to be able to deal with those.

Mr. GINGRICH. Unfortunately, whether the administration is on my side of the aisle or on our chairman's side, there are times in legislative/executive relations when you only educate people by coercion. That often requires passing bills or doing things that require a lot of grass roots help. The more you can help people understand—this really goes to the crux of what has been a long fight to get compliance and a long effort to invest a lot of money by responsible air carriers.

The whole credibility of the future of that relationship is at ake.

Mr. PHILION. We'll certainly try to help.

Mr. GINGRICH. Somehow we are going to have to get this story across. I am very grateful that you have come here today and I think we may be able to continue to stay on DOT's back enough that we can tighten up their processes. I think we have certainly raised the ante on anymore exemptions.

I thank you for the time, Mr. Chairman.

Mr. MINETA. Just one comment. As I recall, Mr. Hettermann, when I was at your base to tighten the last bolt on that CFM56 on that DC-8, I think it was about the time the Secretary was cutting the inspector work force by about 25 percent. I don't know whether

or not we've reinstated all those inspectors to look at that bolt or that CFM56, but I assume it's been cleared and is flying safely in the air.

Mr. Philion, it's been argued that in interpreting the five criteria, DOT and FAA can't decide which air service is valuable because under deregulation, the marketplace decides what service is valuable and it must be presumed that any service provided is valued by the marketplace. Do you agree that under deregulation, DOT and FAA cannot decide that any service is more valuable than any other?

Mr. PHILION. I think they can to the same extent that they did before December 28. I think the discussion of that question this afternoon got a little tortured.

As I understand your criteria, it was that the public would be deprived of valuable public service—not that an airline would be deprived of the value of its own services. I think it's been stretched considerably. One almost has the impression that the policy was decided and the new criteria were written to fit it.

Mr. GINGRICH. If I could just comment on that. Earlier this afternoon, we fairly clearly walked the Secretary through this question of value and proved pretty clearly that it did not mean the same thing as I think Congress intended. They have in effect now eliminated that test and are saying if you existed, you are by definition of value, therefore you— as I said earlier, it's a totalogy that is sort of mindless the way they have now defined it. I think that's an example of where they have just eliminated one of the five standards.

Mr. PHILION. They have.

Mr. MINETA. Gentlemen, let me thank you very much for being here and for your patience and forebearance, given our schedule this afternoon.

Let me just announce that the balance of the agenda and the hearing witnesses will be rescheduled, and it will be at a time that has yet to be determined.

Again, I want to thank your participation here today.

The subcommittee will stand in recess.

[Whereupon, at 6:07 p.m., the subcommittee recessed to reconvene at the call of the chair.]

[The prepared statements of Mr. Philion, Mr. Hettermann, and Mr. Driscoll follow:]

Statement of Norman J. Philion
Air Transport Association of America
Before the Subcommittee on Aviation
Committee on Public Works and Transportation
U.S. House of Representatives
May 22, 1985
On Aircraft Noise Exemption Policies

My name is Norman J. Philion. I am President of the Air Transport Association of America, whose member airlines constitute the major segment of the nation's airline industry.

We welcome the opportunity to provide airline industry views on DOT/FAA policies on exemptions from the January 1, 1985 deadline for compliance with federal laws and regulations on noise emissions of four-engine jet aircraft. We believed, as did most others, that these laws and regulations meant what they said and, in view of their multi-million dollar cost impact, that they would be administered in an even-handed manner. That was the case until late last December when unexplained, conflicting policy changes suddenly began to surface. We are deeply concerned about these changes because they:

- Are contrary to the purpose and intent of the underlying statute;
- Were adopted behind closed doors without notice or opportunity for public input;
- Are unfair to the vast majority of airlines that faithfully complied with the law;
- Will erode public confidence in the seriousness of the federal government's dedication to aircraft noise abatement; and, thereby,
- Could undermine not only the federal source noise rule, but the national air transportation system, itself, by encouraging the adoption of a multiplicity of even more conflicting local restrictions.

Before proceeding, I would like to express our appreciation for the continuing interest this Committee has shown in FAA's longstanding program designed to reduce aircraft noise at the source. Most of our members also share the concerns expressed by members of this Committee that FAA is not enforcing its noise reduction regulation evenhandedly as a consequence of its frequently changing policies for considering exemption requests. Three of our members, Air Canada, Evergreen International Airlines and Hawaiian Airlines, hold different views on some aspects of FAA's exemption policy.

BACKGROUND

In 1968, Congress directed FAA to prescribe regulations for the control and abatement of aircraft noise. In furtherance of that mandate, FAA engaged in protracted rulemaking proceedings which culminated in the adoption of two regulations. One of them established permissible noise levels for certification purposes (FAR Part 36). The other, an operating rule, prohibited the operation of non-complying aircraft at U.S. airports beginning January 1, 1985 (FAR Part 91E).

At various times during FAA's rulemaking process our airline members — individually in some cases, through the Association in others — expressed their misgivings with some aspects of the proposed rules. However, once the rules were adopted, they committed themselves to very expensive programs in order to achieve compliance — by replacing or retiring the non-complying aircraft in their fleets, and by reengining them or retrofitting them with hush kits.

The cost of compliance for ATA member airlines has been enormous. Some 450 aircraft had to be retired sooner than their useful lives otherwise required. Another 980 aircraft were retrofitted at a cost of about $145 million.

An additional 60 aircraft were completely reengined, costing upwards of $750 million. Moreover, nearly 800 higher cost, new technology aircraft meeting the federal noise standards have been acquired -- with another 400 on order — both to replace aircraft that had to be retired and to meet the growth in public demand. The estimated vaiue of these replacement and noise compliant aircraft is $28 billion.

Congress gave its approval to the FAA's source noise reduction program when it enacted the Aviation Safety and Noise Abatement Act of 1979. That Act mandated an extended compliance deadline for two-engine aircraft used to serve small communities. This enactment was in keeping with the Airline Deregulation Act adopted the year before which recognized the need for service to small communities. But in ordering this extension, Congress left no doubt that it expected the FAA program to move forward by urging, in the Conference Report accompanying the legislation, that FAA consider granting exemptions only in special cases. More particularly, the Conference Report set forth five criteria all of which should be met before an exemption from the rule would be in order. Applied to the exemption process, those criteria require an applicant to demonstrate: (1) that it is a smaller carrier; (2) that it is making a good faith compliance effort; (3) that the needed technology is either delayed or unavailable; (4) that it could suffer financial havoc; and (5) that it performs valuable airline service.

Late last year, Congress adopted Public Law 98-473 which contains a provision for mandatory exemptions in the case of some international operations at Bangor, Maine and Miami. We are among those parties that remain unconvinced of the wisdom or fairness of that enactment. However, it is important to note that Congress rejected all entreaties to broaden the scope of that exemption — that is, to extend it to other airports or to require FAA to do so.

For its part, FAA in earlier exemption orders heeded the wishes of Congress. It limited exemptions to hardship cases and insisted that all five of the criteria set forth in the 1979 Conference Report be satisfied before an exemption would be granted. FAA also recognized, in its earlier orders, the fundamental inequity of forcing compliance by most airlines at considerable cost and inconvenience, if the recalcitrant ones were enabled to compete well beyond the cutoff date with non-complying aircraft which became available at cut-rate prices as the result of compliance by other airlines.

RECENT EVENTS

Unfortunately, and inexplicably, as the 1985 compliance date drew near, FAA jettisoned established policy guiding its consideration of exemption requests, and began "winking and nodding" at some of the criteria and simply ignoring others.

Gone, too, from FAA's earlier decisions were the basic canons of fair play, the need to deal evenhandedly in deciding exemption requests. Despite frequent reminders from the Chairman and other members of this Committee that it was off course, FAA persisted in making exemptions easy to come by. For example, in earlier decisions, FAA insisted that all five of the Congressional criteria be met, and stressed that the technology for achieving compliance by retrofitting with hush kits had been developed at government expense in the early 1970s. Thus, carriers having made no effort to exploit that technology were not found to have demonstrated "good faith compliance efforts". In orders issued late last year, FAA accepted contracts belatedly executed for hush kits as meeting this very important criterion, thereby ignoring years of indifference toward the noise rule on the part of many applicants.

The U.S. Court of Appeals for the District of Columbia Circuit in its March 29, 1985 decision in Airmark et al. v. FAA et al., attempted to put an end to FAA's unexplained departure from its earlier precedents and its erratic application of the criteria which the Court characterized as "FAA's exemption shell game". This was accomplished by vacating the exemption orders pending before the Court. Similar action was taken by another panel of the Court in other cases.

Ostensibly in response to the Court's decision, on April 26, 1985, quietly and without warning or public input, FAA announced an entirely new and different policy. That announcement took the form of an order granting an exemption to Lineas Aereas Del Caribe ("LAC"). Understandably, recent experience makes it difficult to be absolutely certain whether this really is FAA's last word on the exemption policy it intends to follow. Nevertheless, the plain language of the LAC Order sets out what is represented as FAA's policy henceforth in dealing with exemptions from the compliance deadline. Therefore, the conclusion becomes inescapable that FAA, intentionally or unintentionally, has failed to grasp the import of the Court's decision or to give more than lip service to the criteria developed by Congress.

In the Airmark case, the Court of Appeals insisted that "FAA act upon the petitions in a consistent manner and that any deviation from prior rulings be carefully reasoned and fully explained". Yet, in the LAC Order, FAA made no effort to explain why it had deviated from its earlier orders — for example, why it is now willing to accept a contract for hush kits executed as late as March 29, 1985 as conclusive of "good faith compliance efforts". Nor does FAA say a word to justify its current willingness to ignore the inequity — the proverbial slap in the face, if you will — to those airlines that have complied with the noise rule.

In the LAC Order, FAA did return to its earlier recitation that all five of the Congressional criteria must be satisfied before an exemption would be granted. However, most of those criteria are rendered useless by the way in which they were explained in the LAC Order. For instance, all applicants will be deemed to have met the "delayed technology" criterion even though they have made no effort over the years to support the development and production of hush kits, efforts previously insisted upon by FAA. And, as noted earlier, any applicant having entered into a contract for a hush kit by March 29 of this year is given a free ride insofar as the "good faith efforts" criterion is concerned. FAA's about face on what must be done to fulfill these two criteria is double-talk, just another way of saying all five criteria, however useless, must be met except these two.

Equally absurd is FAA's omission of another finding that Congress believed to be important in considering exemption requests — that is, a demonstration that enforcement of the rule would "deprive the public of valuable airline service". While just faintly recognizing the intent of Congress, FAA went on to hold that LAC had met this particular requirement simply by showing that it had provided some air transportation service prior to 1985. If this practice is followed, as the new FAA policy suggests that it will, most applicants for exemption will be given a free ride without regard to the value of the service they provided to the public or whether that service can be provided by other carriers with complying aircraft. In other words, all carriers operating before 1985 would now pass the valuable service test notwithstanding the expectations of Congress.

Simply stated, FAA's new criteria do not comport with those set forth by Congress. But they raise interesting questions about what prompted them, especially since interested parties were given neither advance notice nor the opportunity to comment on any change in policy.

Finally, since it paves the way for virtually unlimited noise exemptions, FAA's new policy may well have other very serious consequences. Among these is the deterioration of public confidence in the federal commitment to source noise reduction. In turn, this may lead to the development of an unfortunate "Catch 22" situation.

One of the most troublesome aspects of the new noise exemption policy is that it will be viewed by some as an open invitation for local authorities to fill the void by substituting their individual standards for those applying uniformly throughout the nation. The result might well be the widespread establishment of differing and conflicting local rules that could cripple the national air transportation system. This possibility, and its grave implications, is of even greater concern to the airlines than the fundamental unfairness inherent in FAA's recent switch of policy in approving exemption requests.

CONCLUSION

FAA's change of exemption policy from the statutorily established January 1, 1985 compliance date — which makes the granting of exemptions a virtual certainty — is contrary to the intent of Congress, both in terms of basic noise reduction objectives, and the standards to be applied in considering individual applications for exemptions. That policy change also fails to respond to the instruction of the Court that FAA be both consistent in acting upon exemption requests, and open in deciding and explaining any deviations from prior rulings.

Nothing less than a recision of FAA's April 26 policy change will check the erosion of the noise compliance deadline and arrest the loss of public confidence in FAA's noise abatement commitment. Conformity with the admonishments of Congress and the Court demands it. Basic fairness in the application of government rules, and good faith in public policy-making, require it. Accordingly, we strongly urge that:

1. The April 26 policy statement set forth in Exemption No. 4302 immediately be withdrawn;
2. No other policy changes be made without full public participation;
3. No exemptions from the January 1, 1985 compliance date be granted that are based on standards differing from those applied prior to December 1984; and
4. Through this Committee, Congress reflect its determination to see that appropriate steps are taken to assure adherence to compliance deadlines and consistency in the application of exemption standards.

TESTIMONY OF
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Before the Subcommittee on Aviation
of the House Committee on Public Works and Transportation
May 22, 1985

Mr. Chairman and Members of the Subcommittee:

My name is Donald P. Hettermann. I am Senior Vice President-Technical Operations of Delta Air Lines, Inc. My background and experience with Delta, after three years in the U. S. Air Force, includes 39 years in Maintenance, Engineering and other technical functions of airline operations to improve air transportation. Delta appreciates this opportunity to testify today with respect to the recent abrogation by the Department of Transportation and the Federal Aviation Administration of their statutory mandate to enforce the January 1, 1985, FAR Part 91E noise compliance deadline for four-engine jet aircraft. I also want to commend you, Mr. Chairman, for your active and forceful leadership on this issue.

I shall not delve into the long history of these noise regulations nor will I give you a speech about Delta's exemplary

compliance history. Both this Subcommittee and those who have followed this issue for the past two decades are familiar with that history as well as Delta's leadership in aviation noise reduction. Instead, I will focus on the events of the past year, during which time the Secretary of Transportation and the Administrator, who publicly maintained on frequent occasions that they would rigidly enforce the noise compliance deadline, have totally reversed course. Early in 1984, for example, Secretary Dole said that "[w]e do not believe . . . that extensions to the January 1985 compli: ıce date are justified" (speech of Secretary Dole); that "the FAA will grant few, if any, exemptions from the deadline" (letter to the Hon. William E. Brock, U. S. Trade Representative); and that "I remain resolute in my position that the FAA will grant few, if any, exemptions from the noise compliance regulation, and that operators of noncomplying aircraft bear a heavy burden of proof. Both Administrator Engen and I have stated this position publicly on several occasions." (Letter of October 3, 1984 to Senator Packwood). The FAA itself said that "we intend to enforce [the noise] regulation fully" (letter to Hon. Claude Pepper from Acting FAA Administrator Michael J. Fenello). Until November 1984, the FAA had not granted one single exemption yet, by the end of February, when every operator should have been in compliance for at least two months, the FAA had granted 18 exemptions covering over 40 aircraft (excluding the Miami/Bangor airport statutory waivers).

The U.S. Court of Appeals for the District of Columbia Circuit had serious problems with the FAA's erratic treatment of exemptions, and, as a result, stayed enforcement of the noise law with respect to a large number of operators. In response to the court's directive, the Secretary and the Administrator have now announced their intent to adopt a liberal exemption policy that would grant a waiver to virtually any applicant and render the noise laws meaningless. I refer, of course, to the Order issued by the FAA on April 26, 1985 in FAA Docket No. 24028-2, Lineas Aereas del Caribe, S.A. (LAC). The LAC Order expressly states that it constitutes the FAA's response to the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in the Airmark cases and that the Order expresses the FAA's policy with respect to pending and future exemption requests. The LAC Order clearly represents an incredible and fundamental shift in FAA policy, apparently dictated by the DOT. This new policy lacks even the modicum of justification required by the court to support such a reversal. Rather than recite Delta's legal position on the LAC Order, I refer you to the motion of Delta Air Lines, Inc., American Airlines, Inc., and Transamerica Airlines, Inc., recently filed in the Airmark cases, which we have made available to you.

Notwithstanding the legal deficiencies of the LAC Order, however, the Order represents a serious erosion of the federal noise abatement policy established in 1976. Because of these policy defects, this Subcommittee must take strong action, notwithstanding any additional court pronouncements.

In six short months the FAA has gone from rigid adherence to the January 1, 1985 compliance date to virtually abolishing the requirement. In so doing, the agency misled those of us who genuinely believed in and relied on its regulatory action to reduce noise for the benefit of our airport neighbors and the public in general. We are indignant at this betrayal, baffled that we could have been required to commit to such immense expenditures, only to discover that our Government was unwilling to stand by its word. Mr. Chairman, while Delta recognizes your personal efforts, we do not hold Congress blameless--the Congressional enactment of a loophole last fall by the DOT/FAA, permitting the Miami/Bangor airport exemptions, was used as some justification for further regulatory abdication.

If, as the DOT/FAA seems to think, the new lenient policy is the correct one, how do they explain all the effort that went into compliance with that law by responsible operators? Delta alone spent over $150 million complying with that law. Now that the FAA is, in effect, eliminating the requirement to comply, will it compensate Delta and other responsible operators for their expenditures? And what of the reliance of the millions of U.S. citizens who live near airports and who rightly expected that the government would enforce a law passed by Congress to provide relief from aircraft noise?

There is another aspect of this abrupt reversal that may not yet have occurred to the Secretary and the Administrator but which could substantially impair their agencies' effectiveness in

coming years. In fact, because the effect of the new noise policy is to punish the responsible and reward the delinquent, both agencies are losing credibility with our industry. As you know, the FAA is considering a number of important aircraft interior and other safety matters which have been proposed in rulemaking form or which may be so proposed in the future. Among these are: fire retardant seat covers, strengthened seat supports, smoke detectors, anti-misting fuel, expanded flight data recorders and others. Those proposals which become effective as new safety requirements often have compliance deadlines similar to those established in the noise laws. We in the industry must now ask ourselves:

"Will the FAA implement and enforce such requirements in the same way that it enforced the noise regulations?"

"Will the operator which diligently complies be subjected to competition from laggards possessing FAA exemptions and free of the burden of compliance?"

"Will there again be eleventh hour pressure on DOT from the fringe operators, new entrants and smaller carriers not to enforce the new regulations?"

"And, as an issue most pertinent to this debate, will the FAA similarly gut the requirement that twin-engine jet aircraft be hush-kitted by January 1, 1988?"

These questions are of genuine concern to us in the industry and at Delta we are now openly skeptical of the FAA's sincerity and ability to enforce its regulations in a fair and evenhanded manner.

Mr. Chairman, while the so-called "five criteria" have been and are being much discussed, I want to clarify that Delta has long advocated a much more rigid policy against exemptions. In the Airmark cases, however, the Court of Appeals determined that the FAA had a degree of discretion in developing exemption criteria. Nevertheless, because the FAA has long adhered to the five criteria, at least in principle, and because the court reprimanded the FAA from departing from those previous standards without adequate justification, Delta's position is that the FAA has not, and cannot presently, explain or justify its departure from its pre-November, 1984 standards relying on those criteria. I would like to turn now to a discussion of specific portions of the FAA's new policy with which Delta takes strong exception, and which, in our judgment, are totally inconsistent with the Aviation Safety and Noise Abatement Act of 1979 and which are without any public policy justification.

Public Comment and FAA Scrutiny

During 1984, when exemption requests by the dozens were pouring into the FAA, Delta attempted to respond to every application with comments containing both Delta's general position and specific comments relating to each applicant. The FAA,

however, did not require that petitioners serve copies of their applications on other interested parties. Subsequently, Delta discovered that FAA was encouraging and responding to supplementary filings by the applicants without notice or an opportunity for comment. A number of FAA exemptions were granted on the basis of essentially covert supplemental information.

In part because of the resulting lack of specific comments on individual applications, the FAA appears loathe to require individual applicants to put their factual assertions to the test. Where an applicant asserts: 1) that it will suffer financial harm if an exemption is not granted, or 2) that compliance technology is not available, or 3) that it has demonstrated good faith, the FAA accepts these assertions at face value. In virtually all cases, however, these assertions will not withstand even minimal analysis.

Availability of Technology

In the LAC Order, the FAA announced its new determination that the criterion "needed technology is delayed or unavailable" is essentially met by all petitioners. The FAA offered no explanation for its new and baffling position. Originally, the FAA had concluded that hush kit technology had existed since 1973 and that any lack of present commercial availability did not justify exemptions because it was the noncomplying "operators of these aircraft [which] have failed, until recently, to support the production of hardware for nacelle retrofit." (See, e.g., FAA

Docket 23659, Ports of Call Travel Club, December 12, 1983). "In a December 28, 1984 exemption denial, the FAA stated that since hush kits were 'commercially available long ago,' the petitioner did not meet the 'unavailability of technology' criterion. Aeroservicios Ecuatorianos, FAA Docket No. 24,230 (Dec. 28, 1984). If the FAA had consistently applied the Aeroservicios Ecuatorianos precedent, perhaps no applicant would ever have qualified for an exemption." (Airmark at n. 25). The FAA's reversal of its long-held policy should hold no more credibility with this Subcommittee than it did with the Court of Appeals.

Delta takes strong exception to the petitioners' assertions concerning availability of technology in two respects. First, with respect to the DC-8-60 series aircraft, compliance technology has been available for a number of years and is economically feasible. In the late 1970's, CAMMACORP developed the designs to reengine certain DC-8 aircraft with a fully developed engine manufactured by CFM International, a joint venture of General Electric Corporation and SNECMA, the French engine company. Delta entered into a contract to reengine its 13 DC-8-61 aircraft way back in 1979 and the CAMMACORP reengining has been used to meet the compliance deadline by Delta, United, Transamerica, Air Canada, UPS, Emery, Evergreen and others. This reengining produces compliance with Stage III specifications,

today's most rigid noise standards. In contrast, the hush kits which are the preferred form of delayed compliance barely meet the older Stage II standards.

Second, while the lawyers for the petitioners argue that the reengining method of compliance is too expensive, the fact of the matter is that the difference in compliance costs between reengining and hush-kitting can be made up in the lower operating costs through reduced fuel consumption provided by the reengining option. Thus, as a policy matter, the FAA cannot state that the necessary technology is unavailable with respect to any DC-8-60 series aircraft and Delta believes that any exemption granted on this basis to any such aircraft is in serious error.

Moreover, both the CAMMACORP reengining and various hush kit options were offered to the industry on more than one occasion in the late 70s, both for other model DC-8 aircraft and for various model Boeing 707 aircraft. Hush kit options were not then put into commercial production because the operators did not believe them economically viable and preferred to replace the aircraft. The industry concurred with Congress and the FAA that these older, noisier four-engine aircraft would be better utilized in other parts of the world where noise was less of a problem and that new, quieter aircraft should be introduced here.

Good Faith

Under the new standards announced by the FAA in the LAC Order, good faith compliance is conclusively established by the existence of a firm contract entered into no later than March 29,

1985 (the date of the Airmark decision) for either hush kits or replacement complying aircraft. The Court noted, however, that "[b]efore December 1984, the FAA stated repeatedly that the mere negotiation of a hush kit contract would not satisfy the requirement of a good faith effort to comply with the noise regulation." (Id, p. 16) The FAA now says that an operator can demonstrate good faith by contracting for a hush kit as late as March 29, 1985--three months after the compliance date. Such a standard lacks credibility.

Prior to November, 1984, the FAA expressed considerable skepticism as to the good faith of operators which acquired noncomplying aircraft in the previous few months. Incredibly, the FAA now thinks that an operator which acquired a noncomplying aircraft in December, 1984 with full knowledge that there was no way that aircraft could be brought into compliance by the January compliance deadline, can demonstrate good faith. If that is the case, the term has lost its meaning. Such operators had only one thing in mind--to achieve low operating costs through the acquisition of an aircraft at a fire sale price (the result of the January compliance date) with actual knowledge that the aircraft could not be brought into compliance by such date, betting that the responsible regulatory agency would reverse its long-standing policy and not enforce the law against the new owner. The FAA has provided no explanation for its new, minimal standard for determining good faith.

Financial Harm

The LAC Order states that the financial havoc criterion will be met (1) "if 20% or more of the petitioner's total operations during the same period in 1984 for which it is seeking an exemption in 1985 would [have been] prohibited" or (2) if prohibition of presently noncomplying operations in 1984 would have resulted in "a net loss of greater than 10% of the operator's assets." This level of financial impact, until the LAC Order, was clearly inadequate to constitute the necessary financial harm. The FAA had earlier required a showing "that complete cessation of operations would follow," (Tradewinds Airways, Ltd. v. Department of Transportation, Airmark cases, Brief for the Federal Respondents) and had determined that cessation of 25% of operations would not constitute financial havoc (E. g., FAA Docket 24288, Caricargo, November 30, 1984). The FAA has provided no explanation for its new and minimal standard for determining financial harm.

The FAA's new policy contains minimal standards of revenue loss which appear to have been carefully designed to afford maximum relief to all applicants. In reviewing the propriety of the FAA's criterion, the Subcommittee must keep in mind that we are dealing in most cases with what the FAA's orders of a year ago clearly referred to as "self-inflicted harm;" that is, where the operator bought cheap, noncomplying aircraft as the deadline approached or made no genuine effort to modify or replace its noncomplying aircraft. Any harm it would suffer as the result of denial of its exemption application would be caused by its own

negligence and not by government action. I submit this policy should still apply and that there is a close connection between this standard and the good faith standard discussed above.

The FAA has refused to investigate whether applicants have made any effort to acquire complying aircraft, either through lease or purchase. Such inquiries are an essential element of the review process.

Valuable Service

Perhaps most astonishing of all, the FAA now proposes to eliminate the "valuable service" criterion by holding that any operator provides valuable service. As you have already noted, Mr. Chairman, had Congress meant not to require an evaluation, it would not have suggested the criterion.

Prior to the FAA's November, 1984 series of orders, the FAA had determined that at least certain charter service was not "valuable" (Order in FAA Docket 23978, Airmark Corp., December 18, 1984, and precedent cited therein), and that duplicative scheduled service was not "valuable" (Orders in FAA Dockets 24135, Icelandair, November 20, 1984, and 24288, Caricargo, November 30, 1984). The FAA now clearly attaches no significance whatever to the adjective "valuable." Hence, the FAA, with no explanation or justification, deems all existing service qualifying.

At a minimum, the FAA must examine whether substitute service with complying aircraft is available in the markets in question. Even where the service is "essential," as determined by

the DOT, that should not eliminate the need to meet all the other criteria.

Unfairness

Prior to November, 1984, the FAA had frequently observed that grant of exemptions would be unfair to responsible, complying operators. In denying an initial request of Ports of Call in 1983, the FAA said, "...all operators of affected aircraft have had to pay the cost of compliance. Considering all these operators who have acted in good faith and expended considerable funds toward compliance with the new operating noise limits, the petitioner's request for relief from financial burden cannot be distinguished from the circumstances of other operators of noncomplying aircraft who have chosen to spend the funds necessary for compliance" (FAA Docket No. 23659, Ports of Call Travel Club, December 12, 1983)

One year later, the FAA forgot all about this persuasive argument. As the Court of Appeals stated, "By January 1985, the FAA had found that a significant number of operators had invested the sums necessary to bring their fleets into compliance. Inexplicably, this widespread compliance did not make the unfairness rationale more compelling. Rather, it somehow led the FAA to ignore altogether the unfairness of granting the exemptions." (Airmark at 18) Delta, one of the principal victims of that unfairness, finds the court's analysis equally valid with respect to the FAA's new policy.

Airport Restrictions

Finally, I want to express our deep concern over the effect this policy is having and will have on the proliferation of local operating restrictions. In the current absence of strict FAA enforcement, local airports are scurrying to enact and enforce ordinances and rules to limit the operation of noisier aircraft, in an understandable effort to protect their constituents. The pressure on airport proprietors to adopt local noise rules will intensify as more exemptions are granted. As a result of the FAA's new, lenient exemption policy, some of the carriers receiving exemptions for Bangor and Miami operations have already filed for further waivers to operate into many noise-sensitive airports. Unfortunately, these efforts tend to prompt less well-intentioned endeavors to restrict operations of other aircraft, thus having a detrimental impact on interstate commerce and creating additional access constraints at congested and noise-sensitive airports. We see this trend accelerating, and it bodes ill for our ability to serve the public.

Conclusion

The FAA's abrogation of its statutory responsibility to enforce the noise laws in general, and the January 1, 1985 compliance date in particular, is obvious. In order to restore

the trust of the public and the industry and to achieve the benefits that Congress sought through its noise laws, Delta sincerely urges this Subcommittee to take the following action:

1. Direct the FAA/DOT to withdraw the new, lenient policy immediately as inconsistent with the Aviation Safety and Noise Abatement Act of 1979, Congressional intent, and sound public policy, as demonstrated by the FAA's previous longstanding policy against the grant of exemptions.

2. Direct the FAA/DOT to issue no new exemptions, to place an expiration date of June 30, 1985 on all exemptions previously issued, to deny immediately all pending applications for exemption by returning to the noise exemption policy in force prior to November 1984, and to refuse additional exemption relief to those carriers which have already received a waiver for service at Miami or Bangor.

If the FAA/DOT does not take such action, Congress must legislate such action in clear and unequivocal terms.

Thank you.

UNITED STATES COURT OF APPEALS
FOR
THE DISTRICT OF COLUMBIA CIRCUIT

AIRMARK CORPORATION, Petitioner, v. FEDERAL AVIATION ADMINISTRATION, Respondent.	No. 84-1619
CAREFREE VACATIONS, INC. and WORLDWIDE AIRLINES, INC., Petitioners, v. FEDERAL AVIATION ADMINISTRATION, Respondent.	No. 84-1654
TRADEWINDS AIRWAYS, LTD., Petitioner, v. DEPARTMENT OF TRANSPORTATION and FEDERAL AVIATION ADMINISTRATION, Respondents.	No. 84-1657

MOTION OF DELTA AIR LINES, INC., AMERICAN AIRLINES, INC., AND TRANSAMERICA AIRLINES, INC. FOR AN ORDER DIRECTING COMPLIANCE WITH MANDATE

Intervenors Delta Air Lines, Inc., American Airlines, Inc., and Transamerica Airlines, Inc. respectfully request the Court to issue an order in the nature of mandamus to require the Federal Aviation Administration ("FAA") to

comply with the Court's mandate in Airmark Corp. v. FAA, No. 84-1619 (Mar. 29, 1985). See, e.g., City of Cleveland v. FPC, 561 F.2d 344 (D.C. Cir. 1977).

On March 29, 1985, this Court (Robinson, C.J., Tamm and Wald, JJ.) vacated an FAA order granting an exemption from the FAA's Fleet Noise Rule and two FAA orders denying such exemptions. Adverting to a series of FAA precedents in which the agency had established a clear and fully reasoned policy to limit exemptions from the January 1, 1985 deadline, the Court concluded that the FAA's unexplained last-minute deviation from that policy "can only be described as grossly inconsistent and patently arbitrary." Airmark at 14. The Court remanded the exemption applications at issue in Airmark to the FAA with instructions "that the FAA act upon the petitions in a consistent manner and that any deviation from prior rulings be carefully reasoned and fully explained." Id. at 21 (emphasis added).

On April 26, 1985, the FAA granted an exemption, issued without notice or opportunity to comment, to Lineas Aereas del Caribe, S.A. ("LAC"), in FAA Docket No. 24,028-2 (Apr. 26, 1985) (attached). The LAC order expressly states that it constitutes the FAA's response to Airmark and sets forth the standards the FAA intends to apply to all pending or future applications for exemption. See LAC at 1-2.

The LAC order first states that exemptions will be granted to "petitioners who satisfy all five of the criteria set out by the Congress in the Conference Report on the Aviation Safety and Noise Abatement Act," H.R. Rep. No. 715, 96th Cong., 1st Sess. 23, reprinted in 1980 U.S. Code Cong. & Ad. News 115, 124. LAC at 2. The LAC order then turns to the crucial issue of defining the showing that the FAA will require as to the five criteria: (1) small carrier status,* (2) good faith compliance, (3) delay in technology, (4) financial havoc, and (5) valuable airline service. As shown below, all four of the latter criteria now are defined so leniently as to be essentially meaningless. In defining these criteria, the FAA has departed radically from its original policy; the net effect is an exemption policy even more lenient than the agency's December 28, 1984 position, already held by the Court to be a "deviation from prior rulings." As further shown below, however, there is not even an attempt to meet the requirement that any such deviation "be carefully reasoned and fully explained." Airmark at 21. The prompt intervention of the Court is required to prevent yet another round in the "FAA's exemption shell game." Id. at 17.**

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* A "smaller carrier" is now defined as "a carrier which, on January 1, 1985, operated 9 or fewer transport category turbojet aircraft" or "one which on that date had less than 1500 employees." LAC at 2.

** Not only did the FAA adopt its newest standards without explanation or justification, but the agency also failed to

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Good Faith Compliance. According to the LAC order, good faith compliance is conclusively established by the existence of "a firm contract entered into no later than March 29, 1985 (the date of the U.S. Court of Appeals decision in the Airmark case), for either hush kits or replacement complying aircraft supported by a non-refundable deposit of at least $75,000 for each affected aircraft." LAC at 3. As noted in Airmark, however, "[b]efore December 1984, the FAA stated repeatedly that the mere negotiation of a hush kit contract would not satisfy the requirement of a good faith effort to comply with the noise regulation." Airmark at 16 (emphasis by the Court). The Airmark opinion

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Footnote continued from previous page.

accord due process to other interested parties, including complying carriers which had intervened in the Airmark case. Contrary to the Court's expectation (Airmark at 15 n.25, 21 n.40), the new standards were not published for comment. LAC at 1-2. Nor did the agency acknowledge or address a letter urging adherence to the FAA's original exemption standards, submitted jointly by a group of organizations representing a broad spectrum of affected interests ranging from airport operators to environmental groups (the Air Transport Association of America, the Airport Operators Council International, the American Association of Airport Executives, the National Air Carrier Association, the National Association of State Aviation Officials, the National League of Cities, the National Organization to Insure a Sound-controlled Environment, and the United States Conference of Mayors). See Aviation Daily, Apr. 9, 1985, at 217-18. As noted by this Court, notice and comment procedures in cases of this nature provide a healthy antidote against suspicions that "changes in policy direction . . . [are the result of] agency predisposition, unfairness, arrogance, improper influence, [or] ulterior motivation." Chamber of Commerce v. OSHA, 636 F.2d 464, 470 (D.C. Cir 1980).

specifically criticized the FAA's failure to justify its December 1984 emphasis on hush kit contracts (id. at 16-17), yet the LAC order contains no attempt to explain or justify the agency's new, even more diluted good faith standard.*

The good faith standard announced in LAC attaches no significance to whether the applicant had acquired its noncomplying aircraft prior to promulgation of the Fleet Noise Rule in 1976 or acquired noncomplying aircraft more recently. Previously, the FAA was harshly critical of carriers (such as Airmark) which acquired their aircraft in 1983 or 1984, on the eve of the deadline, at prices depressed by the deadline, with full knowledge of the impending effective date. See Airmark at 17 & nn.29-30. There is no explanation as to why such deliberate retrogression should be rewarded by the grant of an exemption. See Global International Airways v. Port Authority, 727 F.2d 246, 252 (2d Cir. 1984).

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* Incredibly, the good faith criterion will be deemed satisfied by a hush kit contract entered into as late as March 29, 1985. The LAC order thus flouts this Court's conclusion, in stay proceedings involving the same carrier, that "we do not view" entry into a hush kit contract "subsequent to the original effective date of the regulations . . . as a good faith effort at compliance." Order dated Jan. 30, 1985 in Lineas Aereas del Caribe, S.A. v. DOT, No. 85-1036, followed on reconsideration in order dated March 13, 1985. The Court's conclusion in the LAC stay proceedings was fully supported by the holding in Airmark that the FAA's regulation had properly sought to force the development of compliance technology and that the "FAA reasonably concluded that the absence of a deadline perceived by the industry as firm would perpetuate the sluggish development of the hush kit industry." Airmark at 10.

Delay in Technology. The LAC order states that all applicants will be deemed to meet the criterion that "needed technology is delayed or unavailable." LAC at 3. Originally, the FAA had concluded that hush kit technology had existed since 1973 and that any lack of present commercial availability did not justify exemptions because it was the noncomplying "operators of these aircraft [who] have failed, until recently, to support the production of hardware for nacelle retrofit." See, e.g., Ports of Call Travel Club, FAA Docket No. 23,659, at 2 (Dec. 12, 1983). In Airmark the Court noted that, if the FAA had consistently applied its precedent on delay in technology, "perhaps no applicant would ever have qualified for an exemption." Airmark at 15 n.25. The LAC order provides no explanation or justification for the FAA's total reversal of position concerning delay in technology.

Financial Havoc. The LAC order states that the financial havoc criterion will be met (1) "if 20% or more of the petitioner's total operations during the same period in 1984 for which it is seeking an exemption in 1985 would [have been] prohibited" or (2) if prohibition of presently noncomplying operations in 1984 would have resulted "in a net loss of greater than 10% of the operator's assets." LAC at 3-4. Previously, that level of financial impact was deemed insufficient to constitute financial "havoc." Even

during its series of last-minute exemptions in December 1984, the FAA required a showing "that complete cessation of operations would follow." Brief for the Federal Respondents at 22, Tradewinds Airways, Ltd. v. DOT, No. 84-1657. And in denying applications for exemption, the FAA specifically found that cessation of 25 percent of operations would not constitute financial havoc. E.g., Caricargo, FAA Docket No. 24,288 (Nov. 30, 1984). No explanation or justification is provided for the new standards on financial "havoc."

But there is a more fundamental issue than the agency's unexplained turnabout on what level of financial impact constitutes financial "havoc." As noted in Airmark, "[b]efore December 28, 1984, the FAA held that an airline would not meet the 'financial havoc' criterion if the havoc was created by the airline's own doing, that is, by the airline's purchase of noncompliant aircraft after the regulations establishing the January 1, 1985 deadline went into effect." Airmark at 17. The LAC order provides no explanation or justification of why exemptions should be granted to carriers that caused their own financial hardship.

Valuable Service. The LAC order states that "the criterion 'valuable airline service' is met by all petitioners who operated aircraft in charter or scheduled air transportation before January 1, 1985." LAC at 4. In other words,

the FAA now intends to attach no significance whatever to the adjective "valuable"--all existing service is deemed qualifying. Previously, the FAA had ruled that at least certain charter service was not "valuable," Airmark Corp., FAA Docket No. 23,978 (Dec. 18, 1984), and that duplicative scheduled service was not "valuable." See Icelandair, FAA Docket No. 24,135, at 3-4 (Nov. 20, 1984); Caricargo, FAA Docket No. 24,288, at 3 (Nov. 30, 1984). The LAC order provides no explanation or justification for effective elimination of the valuable air service criterion.

Unfairness to Complying Carriers. As noted in Airmark, the FAA initially had stressed unfairness to complying carriers in denying various exemption applications. The Court stated that, in granting last-minute exemptions, the FAA had acted "[i]nexplicably" in failing to explain why "widespread compliance did not make the unfairness rationale more compelling." Airmark at 18. Nonetheless, the LAC order fails even to mention this consideration.*

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* The LAC order likewise fails to address the question of detriment to the noise-impacted public, even though that consideration was deemed important in formulation of the FAA's original standards. See Airmark Corp., FAA Docket No. 23,978, at 2-3 (June 5, 1984); Ports of Call Travel Club, FAA Docket No. 23,394, at 3 (Feb. 4, 1983).

Differing Standards. In Airmark, the Court also criticized the FAA's last-minute grant of exemptions to certain carriers without examination of all five criteria. Airmark at 14-15 & n.25. After setting out the FAA's newest interpretation of the five criteria, the LAC order further states that exemptions will be granted on other grounds to "carriers which have been designated in DOT orders to perform service on routes which have been designated as [essential air service] routes pursuant to section 419 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1389)." LAC at 4. Such a carrier need only show the existence of a hush kit contract. Despite this Court's criticism of the practice of holding different carriers to different standards, there is no careful reasoning or full explanation as to why, for example, financial capability is irrelevant to applicants who provide air service designated as essential.

In summary, the FAA once had a consistent, fully reasoned policy limiting exemptions from the Fleet Noise Rule. This Court has ruled that the FAA may not depart from that policy without careful reasoning and full explanation, for without such justification there is no assurance that "the standard is being changed and not ignored, and . . . that [the agency] is faithful and not indifferent to the rule of law." CBS, Inc. v. FCC, 454 F.2d 1018, 1026 (D.C. Cir. 1971). The FAA now has announced greatly relaxed

standards for exemptions, standards that guarantee the grant of virtually all pending or future applications.

But not even the most sympathetic or strained reading of the LAC order will reveal the careful reasoning or full explanation required by the Court's mandate, because the FAA has chosen for the most part to provide no explanation. There is thus no assurance that the FAA's newest standards may be reconciled with the underlying statutory mandates, no assurance that the agency has not arbitrarily chosen to confer a windfall on a segment of the air carrier industry that either ignored or deliberately subverted the congressional policies.

The intervenor carriers respectfully submit that the FAA's new standards are null and void, for the FAA was "'without power to do anything which is contrary to either the letter or the spirit of the mandate.'" City of Cleveland v. FPC, 561 F.2d at 347. Further, the integrity of the statutory scheme, the regulatory program, and the Court's own processes is at stake. Unless the Court intervenes now and requires the FAA to explain and justify, if possible, the departures from the original standards, a whole new round of invalid exemption orders will issue, leading inevitably to a new round of petitions for review in this Court. The intervenor carriers therefore respectfully

request that the Court order the FAA to apply its original standards for exemption or to explain and justify its LAC order, if such can be done.

Respectfully submitted,

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May 6, 1985

STATEMENT OF

EDWARD J. DRISCOLL

PRESIDENT & CHIEF EXECUTIVE OFFICER

NATIONAL AIR CARRIER ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

OF THE

U.S. HOUSE OF REPRESENTATIVES

MAY 22, 1985

Mr. Chairman and members of this Committee:

I am Edward J. Driscoll, President and Chief Executive Officer of the National Air Carrier Association. I am accompanied by Jeff Manley who is counsel for Transamerica Airlines.

We are pleased, Mr. Chairman, to have this opportunity to express our concern as well as our frustration in connection with the grant of exemptions from Part. 91 of the Federal Aviation Regulations as amended, and the provision of the Noise Abatement Act of 1979.

I will not burden the committee with a detailed account of the actions of DOT/FAA which led up to this as this committee is well aware of the background including the public statements of assured conformance to the criteria contained in the Conference Report covering the Noise Abatement Act of 1979 as well as the deviations from the policy that have occurred since December of 1984. Suffice it to say, the Administration misled the entire industry over a five-year period by repeatedly assuring the industry that "few if any exemptions will issue" and then only in cases where the carrier met the five criteria set forth in that report. These five criteria, as the committee knows, are:

1. Small Carrier Status
2. Good Faith Compliance
3. Delay in Technology

4. Financial Havoc

5. Valuable Airline Service

The five criteria enumerated above and the end date, December 31, 1984 according to the Conference Report on the Noise Abatement Act were to be "the final resolution on this issue, except for extraordinary and unanticipated circumstances." DOT/FAA officials[1/] affirmed in public statements that the Department was going to be guided by and would apply these five criteria in determining whether a carrier was entitled to an exemption. It was specifically stated that "the unavailability of `hush kits` cannot alone justify an exemption unless the carrier has also made a good faith effort to comply, and an economic hardship and a loss of valuable public service would result if the exemption was not issued."

Mr. Chairman, my office, as well as that of many of the carriers, followed the matter of exemptions very closely and up until December 27, even though we heard rumors to the contrary, we were assured by DOT officials that there was to be no change in policy and that "few, if any of the exemptions, would issue". Then, on December 28 the DOT/FAA

1/ The Secretary, Deputy Secretary, Assistant Secretary and Deputy Assistant Secretary for Policy and International Affairs as well as the Administrator of the FAA.

changed their position without notice to industry and began the grant of broad exemptions even though the carrier did not meet the five criteria. That resulted in the grant of exemptions to some carriers by applying criteria on an inconsistent basis. Some carriers, objecting to broad exemption relief by DOT/FAA, appealed to the court.

The court, as you know, after detailed analysis of the handling of the exemption process and the application of the criteria, found the FAA to be totally inconsistent and remanded the matter to the FAA for reconsideration and for consistent handling. The court found that the agency had failed to provide any rationale for its change in policy or the application of differing criteria to individual cases concluding that the inconsistent approach was a "shell game." The court in its order of remand noted: "We must insist, however, that the FAA act upon the petitions in a consistent manner and that any deviation from prior rulings be carefully reasoned and fully explained." The FAA has failed to follow the guidance of the court as it has failed to follow the guidance of the Congress.

Mr. Chairman, the "shell game" continues. In its latest order on April 26 the FAA granted an exemption to Lineas Aereas del Caribe, S.A. ("LAC"). In that exemption order it sets forth a policy statement to govern all future exemptions. And again, without a reasoned and fully ex—

plained approach, applied the five criteria set forth in the referred to Conference Report but interpreted these five criteria differently than before but in such a manner that they are relatively meaningless.

As the committee knows, American Airlines, Delta Airlines and Transamerica Airlines have filed a motion with the court for an order in the nature of a writ of mandamus to compel the agency to comply with the court's mandate. That case is still pending.

The handling, Mr. Chairman, of this matter by the DOT/FAA raises may issues as follows:

A. Credibility of an agency

B. Fairness

C. Economic Harm

I will discuss each of these elements in my testimony.

Credibility: After almost the entire industry complied with the mandate set forth in the Noise Abatement Act of 1979 and the FAR; and after repeated assurances that the agency and DOT would be governed by the Congressional mandate; the DOT/FAA without notice and with no rationale whatsoever, completely scuttled the applicability of the five criteria which they had assured the industry they would be guided by and in a somewhat cavalier manner issued exemption after exemption, applying different standards, but nevertheless, permitting continued use of noncompliant

aircraft by those carriers who had not complied with the law or the rules. These noncomplying carriers were given benefits to the detriment of the rest of the industry. The industry as a whole had complied with the law, invested billions in compliant aircraft, as well as, re-engined aircraft. The question that is unanswered at this point in time is why the Administration felt they had to give a benefit to a group of air carriers who defied or ignored the law; when these carriers bought aircraft with notice that it would not comply and thus created their own financial havoc, if any exists. Why are these, noncompliant carriers entitled to special treatment? Why is the Administration turning its back on the entire industry that did comply? The fundamental question, Mr. Chairman, is: Is there any credibility in government left; will the industry ever rely upon a rule or regulation or policy statement by government.

Given the very cavalier approach taken by DOT/FAA, we would hope as a result of this hearing process, the Committee would be able to turn back the clock, convince DOT/FAA to reinstate the position it had taken prior to December 28 which the majority of the industry relied on in bringing itself into compliance.

Fairness: [2/] The Administration in its application of the noise rule since December 28 has not been fair to the entire industry that spent billions of dollars in the acquisition of compliant aircraft, as well as, re-engining noncompliant aircraft. DOT/FAA has not been fair in the application of reasoned criteria in the grant of exemptions. It has not been fair as it has permitted almost all noncompliant aircraft to operate in competition with compliant aircraft. It has not been fair as it has abondoned the imposition of any final date for compliance. The book value or investment value of these noncompliant aircraft which were acquired by many of the operators at distressed prices from carriers who complied, enables operators to utilize the equipment in competition with carriers with compliant aircraft. Compliant carriers who invested millions and millions of dollars in acquiring new or re-engined aircraft cannot compete or if they do compete, they do so at rates which are noncompensatory. One of our carriers who re-engined its DC-8's at a cost of $17 million per copy is unable to effecutally compete against noncompliant 707's and noncompliant DC-8's because of reduced investment in such 707's and DC-8's..

2/ While not part of the Congressionally mandated five criteria, the DOT/FAA had consistently applied a fairness rule in the consideration of exemptions up to Dec. 25, 1984.

Economic Harm: I have already alluded to the fact that economic harm is resulting from the operation of the noncompliant aircraft. Carriers who have invested substantially in new or re-engined equipment must recover the cost of that compliance. The only way of recovering that cost is by establishing their rates and fares at levels that will permit them to recover that cost. The carriers that did not comply can charge a lower price because they acquired aircraft in many cases at distressed prices. Many of these carriers acquired the equipment with the knowledge that under the then existing policy of DOT/FAA they would not be permitted to operate them after December 31, 1984 unless the aircraft complied with the required noise levels. This economic harm will continue until these carriers are precluded from operating such aircraft or until such time as they have "hush kitted" or re-engined or replaced them with compliant airplanes.

Mr. Chairman, the question confronting, not only compliant carriers, but the public as well is : What can be done to correct the inequitable situation? I have previously stated that this can only effectively be accomplished by convincing DOT/FAA to return to the pre December 28 policy. That action is the most desirable, as well as, the most equitable to all concerned. Should that prove impossible the establishement of a date beyond which no more exemptions

would issue is a must. The September 30 Certificate deadline date for manufacturers of "hush kits" as well as December 31, 1985 for air carrier compliance should and must be the final date for compliance.

In the meantime, between now and that date, the curfew established by FAA in its latest order must be effectively enforced. In addition, the monthly level of operations must be contained to that level the noncompliant carrier operated in calendar year 1984, as well as, reinstating the restriction previously in effect, limiting such operations to the airports through which such operations were conducted in 1984.

Given the prior action of DOT/FAA, it is conceivable, unless this committee obtains a commitment from officials of the agency that they will not extend these deadlines, they might. The industry that complied is entitled to a final date certain and these dates must be September 30 for the manufacturer and December 31, 1985 for the airline. This provides an additional year beyond December 31, 1984, which is certainly more than reasonable.

The status of hush kits is really not known by the majority of the people in the industry. Little information has been released by the DOT/FAA. We believe this committee should have DOT/FAA provide a detailed status report on the progress or lack of progress by the manufacturers and when

the agency anticipates STC's if any, will issue.

In conclusion, Mr. Chairman, we in the industry who have faithfully complied with the Noise Abatement Act of 1979 and the FAR's should not be abandoned. We deserve recognition for our timely compliance, as well as, being assured that our compliance, at substantial cost, has not been a folly. We believe that the Government must be held accountable for its actions and not be permitted to scrap or substantially alter a policy after the majority of the industry has fully complied with that policy.

The public is entitled to reduced levels of noise and should not continue to be subjected to unacceptable levels in order to give benefits to operators who through their own fault have failed to comply.

We hope your committee will take timely and appropriate action.

THE DEPARTMENT OF TRANSPORTATION'S AND FEDERAL AVIATION ADMINISTRATION'S POLICIES ON EXEMPTIONS FROM AIRCRAFT NOISE EMISSION REGULATIONS

WEDNESDAY, JUNE 12, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to recess, at 10:20 a.m., in room 2167, Rayburn House Office Building, Hon. Norman Y. Mineta (chairman of the subcommittee) presiding.

Mr. MINETA. The Aviation Subcommittee will please come to order.

Today we will be finishing the hearings which we began on May 22nd on the policies of DOT and FAA on exemptions from aircraft noise regulations. At our May 22nd hearings we heard testimony from DOT and FAA, the Air Transport Association, the National Air Carrier Association, and Delta Airlines.

At today's session the witnesses will include representatives of hush kit manufacturers, airlines seeking exemptions, and airport authorities. Since our first day of hearings, DOT and FAA have issued additional exemption orders, and I'm going to place in the record a summary of these orders, which was prepared by FAA.

[Copy of exemption summary follows:]

6-11-85

STATUS REPORT
ACTIONS ON PETITIONS
SINCE MARCH 29, 1985

	PETITIONER	DOCKET	ACTION	DATE	AIRCRAFT	EXPIRES
1.	LAC (Colombia)	24028-1	Grant	4-26-85	1 DC-8-54F	12-31-85
2.	Peninsula Seafood	24099	Denial	5-06-85		
3.	Global Intern l.	24478	Grant	5-06-85	1 707-331	8-31-85
4.	Fast Air (Chile)	24481	Grant	5-14-85	1 707-321C	8-31-85
5.	Aer Turas (Ireland)	24352-1	Grant	5-24-85	1 DC-8-63F	8-31-85
6.	Fan Aviation	24384-1	Denial	5-24-85		
7.	Skystar Intern l	24578	Denial	5-24-85		
8.	So. Pacific Is.	24146-1	Denial	5-29-85		
9.	Japan Air Lines	24221-1	Denial	6-05-85		
10.	Airmark	23978-1	Grant	6-07-85	1 707-138B	10-31-85
11.	Airlift Intern l	24086-1	Grant	6-07-85	3 DC-8-54/61	11-30-85
12.	Rich Intern l	24231-1	Grant	6-07-85	3 DC-8-62	9-30-85
13.	Varig (Brazil)	24250-1	Denial	6-07-85		
14.	Skystar Intern l	24208-1	Denial	6-07-85		
15.	Buffalo Airways	24289-1	Grant	6-11-85	1 707-382B	10-31-85
			8 Grants		12 aircraft	

LIMITATIONS PLACED ON GRANTS:

Hours of operations - 0700 to 2200 local time, except BGR and MIA.
Exempted aircraft specified by registration number, dependent on firm "hush kit" contracts.
Exemptions expire at end of month of scheduled "hush kit" installation.
Number of operations limited to those performed during same period in 1984.
Monthly reports required to review compliance with terms of grant.

6-11-85

CURRENT OPERATORS WITH NON-NOISE-COMPLYING FOUR-ENGINE AIRCRAFT

	OPERATOR	STATUS	AIRCRAFT(ACQUIRED)	HUSH KIT SUPPLIER	HUSH KIT SCHEDULED
1.	Icelandair (Iceland)	Court stay	2 DC-8-63(3-84)	AATI	11-30-85
2.	Caribbean Air Cargo	Court stay	2 707-351C(2-81)	ATS	7-31-85
3.	Hawaiian Airlines(EAS)	ASNA exempt	2 DC-8-62/63(12-82)	TNC	6-30-85
4.	Arrow Air	Court stay	12 DC-8-62/63(1-82)	TNC	7-31-85
5.	Airmark	ASNA exempt	1 707-138B(10-83)	ATS	10-31-85
6.	Buffalo Air	ASNA exempt	1 707-320(11-83)	ComTran	10-31-85
7.	Rich International	ASNA exempt	3 DC-8-62(10-83)	TNC	8-30-85
8.	Ports of Call Travel	Court stay	8 707-100/300(8-80)	ComTran	6-30-86
9.	Airlift International	ASNA exempt	3 DC-8-54/61(2-82)	SAI	11-30-85
10.	Iantop	Court stay	3 DC-8-62(7-84)	ADC	4-30-85
11.	ARCA (Colombia)	ASNA exempt	2 DC-8-54(12-80)	SAI	11-30-85
12.	Trans Global	Court stay	2 DC-8-55(?-85)	SAI	11-30-85
13.	Samoa Airlines	ASNA exempt	1 707-351(9-84)	ComTran	12-31-85
14.	Air Transport Intern	Court stay	2 DC-8-62(?-85)	ADC	6-30-85
15.	National Airlines	Court stay	3 DC-8-63(?-84)	ADC	12-31-85
16.	Southern Air Transport	ASNA exempt	1 707-320C(5-85)	ComTran	8-31-85
17.	LAC (Colombia)	ASNA exempt	1 DC-8-54(6-80)	SAI	12-31-85
18.	VARIG (Brazil)	H/C exempt	3 707-320C(1966)	ComTran	12-31-85
19.	Surinam Air (Suriname)	H/C exempt	2 DC-8-62(1-84)	TNC	6-30-85
20.	LAB (Bolivia)	H/C exempt	2 707-321(1977)	ComTran	11-30-85
21.	Florida West	H/C exempt	1 707-331(7-84)	ComTran	11-30-85
22.	Fair Air	H/C exempt	1 CV-880(1977)	Replace	5-31-85
23.	Fast Air (Chile)	ASNA exempt	1 707-320C(1978)	ComTran	8-31-85
24.	LAP (Paraguay)	H/C exempt	1 DC-8-63(?)	TNC	9-30-85
			1 707-321(1978)	ATS	9-30-85
25.	Challenge Air	Court stay	1 707-330C(10-84)	ComTran	4-30-85
26.	Ecuatoriana (Ecuador)	H/C exempt	2 707-300(1976)	ComTran	10-31-85
27.	TAR (Argentina)	H/C exempt	1 707-338C(1978)	ComTran	12-31-85
28.	LAN-Chile (Chile)	H/C exempt	1 707-385C(1978)	ComTran	11-30-85
29.	TAMPA (Colombia)	H/C exempt	2 707-320(4-80)	ComTran	12-31-85
30.	LACSA (Costa Rica)	H/C exempt	1 DC-8-55F(4-82)	SAI	9-30-85
31.	Sterling (Denmark)	H/C exempt	3 DC-8-63(5-84)	ADC	12-31-85
32.	Pan Aviation	H/C exempt	1 707-321(6-83)	ATS	10-31-85
33.	TransBrasil (Brazil)	Court stay	1 707-338(?)	ATS	11-30-85
34.	Global International	H/C exempt	1 707-331C(?)	ATS	6-30-85
35.	Aeromar (Dominican Rep)	H/C exempt	2 DC-8-54F(12-83)	SAI	10-31-85
			2 720(3-83)	Replace	5-31-85
36.	AECA (Ecuador)	H/C exempt	1 DC-8-54(?)	SAI	12-31-85
37.	ABCO	Court stay	1 707-321B(12-82)	ComTran	4-30-85
38.	Independent Air	Court stay	2 707-320(8-83)	ComTran	12-31-85
			2 720(1973)		

OPERATOR	STATUS	AIRCRAFT(ACQUIRED)	HUSH KIT SUPPLIER	HUSH KIT SCHEDULED
39. Tradewinds (UK)	Court stay	2 707-320C(1977)	ComTran	4-30-85
40. Worldways (Canada)	Court stay	4 DC-8-63(3-83)	ADC	2-28-86
41. Minerve (France)	Court stay	1 DC-8-62F(11-82)	ADC	11-30-85
42. Worldwide Carefree	Court stay	3 707-331(4-84)	ATS	12-31-85
43. Aer Turas (Ireland)	ASNA exempt	1 DC-8-63F(7-84)	ADC	8-31-85
		96 aircraft		

SUMMARY

AIRCRAFT TYPES	NUMBER	SUPPLIERS	STATUS OF STC
Boeing 707-100	1	ATS	in development
	3	ComTran	in development
Boeing 707-300	9	ATS	in development
	27	ComTran	issued 2-85
Boeing 720	4	none	
Douglas DC-8-50 -61	12	SAI	in development
Douglas DC-8-62 -63	17	ADC	in development
	2	AATI	in development
	20	TNC	in development
Convair 880	1	none	
	96		

Abbreviations:

ASNA - Aviation Safety and Noise Abatement Act of 1979
H/C - Hawkins/Chiles amendment, section 124 of Public Law 98-473
AATI - Aeronautical Acoustic Technology Inc., Palos Verdes Estates CA
ATS - Aviation Technical Support, Waco TX
TNC - The Nacelle Corporation, Waco TX
ComTran - Community Transportation Ltd., Goleta CA
SAI - Snow Aviation International, Van Nuys CA
ADC - Aeronautic Development Corp. Ltd., Amsterdam, The Netherlands

Mr. MINETA. The summary indicates that since April 26, when DOT and FAA announced their new exemption criteria in the LAC case, DOT/FAA have granted eight exemption applications and denied seven applications. The denials have caused the termination of court-ordered stays which permitted the operation of aircraft pending an FAA decision. As a result, the number of noncomplying aircraft has been reduced from 113 at the time of our first hearing to 96.

In the past, I have strongly criticized FAA and DOT for vacillating in their exemption policy and for ultimately adopting a policy which effectively abolished most of the criteria which Congress had directed DOT and FAA to apply. Nothing I heard in our first day of hearings persuaded me that there is any justification for the DOT/FAA liberal exemption policy. However, I do want to note for the record that, even though I continue to believe that the DOT/FAA criteria are too liberal, I am pleased that DOT/FAA are at least willing to stick to these criteria and to sometimes even deny an application.

I hope that DOT and FAA will continue to be firm and, in particular, that they will not go back on their commitment that there will be no exemptions beyond January 1, 1986, for air carriers which do not have firm hush kit contracts with suppliers that were certified no later than September 30, 1985.

At this time I am pleased to yield to my very fine colleague, Mr. Hammerschmidt.

Mr. HAMMERSCHMIDT. Thank you, Mr. Chairman. I have no statement at this time, Mr. Chairman. I want to join you in expressing our appreciation for our witnesses being here, and I'm looking forward to hearing them.

Thank you, Mr. Chairman.

Mr. MINETA. Mr. Snyder?

Mr. SNYDER. No statement.

Mr. MINETA. At this time let me call forward the first panel, and that's made up of Mr. Morris D. Jaffe, vice president, Comtran, Ltd.; Mr. Robert E. Wagenfeld, chairman of the Aeronautic Development Corp. and president of National Airlines, and Mr. Crawford Shaw, who is counsel to Noise, Ltd.

Mr. Jaffe, we have your statement, and it will be made a part of the record, so why don't you go ahead and proceed in your own fashion?

TESTIMONY OF MORRIS D. JAFFE, SR., VICE PRESIDENT, COMTRAN, LTD.; ROBERT E. WAGENFELD, CHAIRMAN, AERONAUTICAL ACCOUSTICAL CORP., AND PRESIDENT, NATIONAL AIRLINES; AND CRAWFORD SHAW, COUNSEL, NOISE, LTD.

Mr. JAFFE. Mr. Chairman, I am pleased to appear before you and the members of the subcommittee to give you a short summary of the status of the Quiet 707 Program, our projections of conversions for the coming year, and to answer any questions that you and/or your colleagues may have on this complex technology. The members of the subcommittee have my prepared statement, which I would like to highlight, and also to provide more time if necessary for questions.

In an effort to meet the requirements of the Congress to abate aircraft noise, a consortium composed of Comtran, Ltd., of San Antonio; Shannon Engineering of Seattle, WA; Tracor Aerospace of Austin, TX; and the Rohr Corp. of Chula Vista, CA set out in 1983 to use the best of the engineering state of the art and available technology to meet Congress' mandated time for conversion of the fleet of 707's so as to meet DOT aircraft noise standards.

Since that 1983 beginning, Mr. Chairman, the Quiet 707 Program has been on a fast track, though not without its disappointments and unforeseen delays.

The history of aircraft noise regulations is well known to all present here today and I needn't take up the subcommittee's time with a recitation of its evolvement. Let me just say that all of us recognize that this is a major public concern. We did see a need to provide noise abatement for small operators, and an alternative to high cost—perhaps prohibitive cost—of aircraft replacement. The economic impact of aircraft replacement or engine replacement would force these smaller operators out of business and, with that failure, a valuable supplemental air service to small markets and users would be lost.

The hush kit technology was seen by the FAA and small carriers as a workable and positive alternative to the harsh economic alternatives of full aircraft or engine replacement. It should be added, Mr. Chairman, that the FAA has been consistently stringent in the precertification process with this technology, and this delay has caused some slippage of our original timetable for certification. The delay has meant the original investment in time and money by the partners in the consortium of the Quiet 707 Program has gone far beyond our original estimates. More than $50 million has been committed to the development of this technology before the first nacelle was installed in a Boeing 707. The retooling process and advanced purchase of hush kit materials to make the program economically viable forced the manufacturers into a very real situation of acute financial risk.

Now, let me divert a minute, Mr. Chairman. The reason we got in a trap was that after we had done the ground test and elected to proceed with flight test—and we sort of had three goals in this program. One was the ground test at Rohr Aircraft that would tell us whether the program was a "go" or "no go" deal; in other words, at that time, if we think it can be successful, the next step is that we commit to "go" or "no go."

Well, we committed to go, but there was a little mistake made that we forgot about. To get the STC from the FAA you have to do all of your flight tests on nacelles made on permanent tooling that you're going to have your final STC on. Well, that was another $5 million that we'd forgotten about, a cost in this program. So we committed to do the permanent tooling and continue with the flight test. Then once we got into the flight test, before we ever had the STC, we were notified by Rohr that in order to get these nacelles out at any time in the year 1985, we would have to order nacelles then because Dynarohr, which is a patented process developed by Rohr Aircraft that is used in the 747, the 727, the 737, the L–1011, the Douglas DC–10 as a material to quiet these nacelles, has a year's leadtime. So, consequently, we had to go ahead and

order nacelles when we didn't even know if we'd ever get an STC. So it was sort of a catch-22; we just had to keep going, which in turn ran up a tremendous amount of cost in the program.

Now, we didn't really have much success in selling these kits until after the Hawkins-Chiles bill was passed and until after the chairman came out in Aviation Daily and said that you all are going to be firm on this noise abatement. So, in the interests of time, all I can tell you is that we have completed the program. We do have our STC. We have installed, as of now, four; we're trying to get to four a month by August. We hope to get to five a month by probably October. And just 2 weeks ago I had a meeting with Harry Todd, who is chairman of the board of Rohr, and we agreed to double the tooling required so that we could get our production up to seven a month by January, 1986; and by May, 1986, we should catch up with our original plan of having 60 nacelles—complete ship sets—installed, by May of 1986.

The orders, I am happy to say, are coming in excellent. We now have over 60 sold. My son just returned from the Paris Air Show; and the Chinese Government said they were going to retrofit their airplanes, that they would be in to see us next month. People like El Al, TAP Airlines, Saudia, and people that were going to abandon these 707's have now elected to keep them.

So, in the interests of time, if there are any questions you would like to ask, I would be happy to try and answer them.

Mr. MINETA. All right.

Mr. Wagenfeld?

Mr. WAGENFELD. Thank you, Mr. Chairman.

I submitted a statement at the May 22 hearings, which we didn't have time to reach at that time. I don't intend to read this statement. I'd like to make some comments on the testimony that was given on the 22 of May.

First, I think that we, as I have over the last few years, start with the proposition that in the 70 years of aviation history as we know it, this is the first time that a perfectly serviceable, economic, and structurally sound aircraft has been artificially rendered unserviceable by just a regulation or legislative fiat.

I think there is bound to be pressure or reaction to such an action. All of us are sympathetic—and this is the whole reason, for the whole program—with the problem of aircraft noise and noise pollution in the environment. It was for that reason that 15 or 16 or 17 years ago the U. S. Government, through various departments, spent a great deal of money in research on the so-called hush kit, principally for the four-engine DC-8 and 707 aircraft, although out of that research grew hush kits which were later installed at a much lower cost on DC-9's and Boeing 727's and aircraft of that type.

But unfortunately, these rules and regulations and the Noise Statute of 1979 do not exist in a vacuum, but they have to live in an economic environment where all of us are trying to run airlines and make a living. If you are not able to operate your aircraft, then is it just that you should be eliminated and not be operating any more, even though it's the small carriers who have so frequently brought innovation and especially pricing to the general public?

Another thing I hope the committee will not lose sight of, which I have mentioned in my written testimony, is that the relative amount of dollars that smaller carriers may spend for alternative means to make their aircraft comply with the noise rules are the same types of expenditures for those carriers as $150 million is for Delta Airlines, for example. And this is pointed out in page 2 of my text, and I would hope that the committee would take notice of it.

Another thing that was stated on May 22 that is either the result of misinformation or just plain wrong is that technology has always existed for these hush kits that we're all talking about. I think you have to be careful what you're talking about here because, while the Boeing Co. and Douglas developed some means of quieting some of these aircraft many years ago, you are now at a stage where technology is a good deal different but, more importantly, if you say technology is developed then that implies that a carrier can use it, which they cannot. If it was developed perfectly, it's useless until it's certificated by the FAA, totally useless. All of us have spent a lot of time and money, as Mr. Jaffe has pointed out, to make this technology truly available. But to sit here, as Mr. Hetterman did, and say that it is available is simply not true. It couldn't be further from the truth.

Now, we hope that by the end of this month ADC will be certificated. We have about 50 orders for the DC-8—a substantially different airplane, by the way, than the Boeing 707, and requiring different noise treatment than the 707.

It's awfully important with respect to the exemptions that the FAA has been granting—a key issue in the 1979 statute is whether or not the availability of proper technology to quiet the airplanes is there for air carriers, and it has not been. Up until February for the 707, Mr. Jaffe's program, and the latter part of this month for our program, for the DC-8. And this is key in whether or not the FAA, who is on the front lines, should grant exemptions to carriers until the moneys that they have committed to these programs bear fruition and the technology is truly available to them.

Now, another point that I made in my written statement that I would like to elaborate a little bit on is that we are all concerned about time here, and why we are past the first of this year and still waiting for aircraft to be brought into compliance.

With respect to the DC-8, the certification process and the development and final issuance of an STC for the DC-8 could have been accelerated by many months had the airframe manufacturer, Douglas Aircraft Co., determined that they would cooperate with those persons who wished to modify their aircraft in this fashion. Douglas took the position, as I've stated in my testimony, that they would not do this. By my estimate, it has delayed the certification of hush kits for the DC-8 by 6 months to 1 year at the minimum and driven the cost of that certification to triple to four times what it should have been.

ADC has effectively rederived the loads and the aerodynamic characteristics of the DC-8 through reverse engineering and computer modeling. The volume of data output that we have done has been equivalent to getting a type certificate for the original aircraft. None of this would have been necessary had Douglas made a

different decision with respect to providing the structural and stress data that they already have with respect to the DC-8.

Another point that I wish to make is that we should be well aware that a hush-kitted DC-8 or hush-kitted 707, while very different airplanes, will be relatively as quiet as a hush-kitted 727 or DC-9 that have been flying for many, many years. We have taken, with the hush kit on the DC-8 aircraft, fully half of the noise out of the aircraft that it makes. As a rule of thumb, every ten decibels of noise reduction shrinks the perceived noise by 50 percent and reduces the noise energy by a factor of ten. Not only, then, will the hush-kitted DC-8 of ADC comply with stage 2, but its greatly reduced noise footprint should certainly persuade local airport authorities that it is a fully acceptable aircraft at any time of the day or night, just as the several thousand twin engine and three-engine aircraft which are also hush kitted and flying do as well.

Finally, I think we've turned the analysis a little on its head when we say that, without making any distinction, operators simply waited for the noise rules to become close and the values of the aircraft to come down to almost junk values, and then rush out and purchase. Many airlines, including ourselves, owned these airplanes for many years. We purchased aircraft at $11 million, a DC-8-63, which were 1968 dollars. Nobody told us then that the airplane would not have its usual useful life. Perhaps like Dickens' Mr. McCawber, we waited, after 1976 and 1979, hoping something good would turn up. But the thing we must never lose sight of is that you can do what you can do within the means of what you have. When the noise statute was considered, the Congress rejected any funding or guarantees for those carriers who might not be able to replace their aircraft, reengine them, or ultimately hush kit them.

Finally, please don't lose sight of the economics that all of us have to live with. When the Noise Statute was passed, oil was about $35 a barrel. It reached its peak in 1981 at about $41 a barrel, and has dropped precipitously since that time. When you add to that the escalation of interest rates during that same period and the stiff recession we've all been through, then what should these smaller, undercapitalized carriers do? Go out of business, or find an alternative to quieting their aircraft and bringing them within compliance of the governmental rules?

There are several alternatives here and we have been forced, really, to follow the other one. Fortunately, the drop in fuel prices has enhanced the value of the hush kit. Often times, the fleet plans that we all make, including those of Delta and United and others, are made foolish in a short period of time by the rigors of the economics in the marketplace. And that's what's really happened here.

We should all work hard now to find solutions in the next 2 or 3 months, and I think the FAA has found a very good interim solution until the hush kits are readily available because they not only have to be certificated, they have to be produced at a sufficient number per month to quiet these aircraft.

That's the end of my comments, Mr. Chairman. I'm ready to take any questions you might have.

Mr. MINETA. Thank you very much, Mr. Wagenfeld. Your full prepared text will be made a part of the record.

At this time I'd like to have Mr. Shaw, counsel to Noise Limited, make his statement.

Mr. SHAW. Mr. Chairman, Mr. Wallis presently is in Europe, actually on the business of the company, and I am the general counsel for the company and its secretary, and I am therefore here on his behalf and the behalf of the company.

We have prepared, or Mr. Wallis has prepared, a statement which we have submitted to the committee and I will not at this time try to read the full text of that statement. I will simply submit it. I will try to make a couple of comments that I hope will be useful to the committee based upon Mr. Wallis' statement, and then if there are any questions, I am here to answer them.

Now, AAT was formed in 1982 solely for the purpose of producing a hush kit for the DC-8 62/63 series aircraft. AAT's objective was and is to achieve maximum sound reduction without degradation of aircraft performance and safety, rather than to squeeze under the stage 2 of part 36 of the Federal Aviation Regulations governing noise level requirements.

The company's purpose was also to correct a number of design deficiencies inherent in the initial DC-8 62/63 series, and to come as close as possible to the regulations without performance or safety give up.

To initiate our program, AAT required initially 20 firm orders at a launch price of $2.5 million per aircraft. We asked at that time for no downpayment, but sought a letter of credit in the amount of $1 million per order. Such a letter of credit could only be drawn by AAT upon receipt of a supplemental-type certificate issued by the FAA. The company also arranged insurance in the amount of $20 million against failure to achieve certification. In other words, the program was designed to minimize customer risk and to tie customers to the program in the event of success. We believe that that procedure was in accordance with the intent of Congress.

In our view, a down payment of $75,000 against an order in excess of $2.5 million is not necessarily an indication of good faith; rather, it could be construed as the cost of doing business for the year of exemption.

AAT is also concerned that a number of exemptions have been granted based on contractual arrangements with hush kit manufacturers who are unlikely ever to deliver a compliant product.

Mr. Chairman, we would also like to comment on some other testimony given on May 22. The statement by Mr. Wagenfeld that the small carriers' inability to comply with the noise rules by January 1, 1985, results from circumstances beyond their control, in our view, is not correct. Had these carriers responded to AAT by the placement of orders, many could have complied. Instead, and with few exceptions, they elected to run out the deadline in the hope that FAA would relax its position. Thereafter, they have largely awaited the outcome of various levels of litigation. Further, and to paraphrase other testimony given to this committee, if small carriers did not leap at the chance to contract for hush kits early last year, it was only because any sensible company would be hesi-

tant to commit such a large portion of its resources for totally untested devices produced by newly formed companies.

Mr. Chairman, at least one hush kit manufacturer, and that is ours—AAT, now Noise Limited—required commitment of resources only in the event of the success of its program. Moreover, it has obtained contractual commitments for ground testing by Pratt Whitney and for manufacture by Grumman Aerospace Corporation, neither of these corporations being exactly newly formed companies.

We are also able to announce and to confirm that Grumman Aerospace Corp. is a significant risksharing partner in our $31.5 million program.

And, Mr. Chairman, we are concerned by the date of September 30, 1985, setting forth the deadline for STC certification for all hush kit suppliers. Our view is that our company and Grumman have refused the compromise the safety, effectiveness, and integrity of the program in the interests of a premature launch. And although we feel every sympathy with the operators who have placed orders with our competition, we do not believe that it was the intent of Congress to create a monopoly in favor of a lesser solution to the problem. Now that the operators accept that DOT/FAA is serious about noise compliance, we respectfully urge that the arbitrary certification date be set aside in favor of a more workable judgment criteria.

Beyond the statement that we have submitted to you, Mr. Chairman, I think it is worthwhile to note that the entire efforts by the committee, by the FAA and DOT, assume that the present hush kit manufacturers for the DC-8 will, in fact, comply. We have serious doubts as to whether that will occur, and it would seem to us that in the interests of obtaining the objectives, reaching the objectives of the legislation, which is to produce a quieter engine and a safe and effective engine, that ample opportunity be given to all hush kit manufacturers to reach the objectives which we all want.

And therefore we ask that you consider carefully, and we will be making further presentations to the FAA and to the committee, respecting the September 30 deadline. I stand ready to answer any questions if the committee has any.

Mr. MINETA. Thank you very much, Mr. Shaw, and your statement on behalf of Mr. Wallis will be made a part of the record.

Mr. Jaffe, data given us by the FAA indicate that you will be the hush kit supplier for 28 707-300's and three 707-100 aircraft which are currently operating under exemption of court-ordered stays. I'm interested in what payments these operators have made to you. Do I understand from your testimony that each of these operators has made a $100,000 initial deposit and a $400,000 additional payment when you get your STC?

Mr. JAFFE. That's absolutely correct, Mr. Chairman. They've all paid their—right now, they all have paid in at least $500,000; some of them have paid in as much as $1 million already.

Mr. MINETA. And will these operators be required to make any additional payments?

Mr. JAFFE. Absolutely. When the airplane is called in to Santa Barbara for installation of the kit, they have to pay another

$750,000, and then $750,000 more when the airplane is turned back over to them.

Mr. MINETA. You now have hush kit orders through July 1986, as I understand it. There are about operators of exempt 707's who have contracts with another supplier. Under the FAA criteria, if the other supplier is not able to be certified by September 30, 1985, those operators will have to then contract with Comtran to keep their exemptions. Suppose, on October 1, you get 10 additional orders. Approximately how long do you think it will take to install hush kits on those 10 aircraft?

Now, in giving me this estimate, would you please consider whether, between now and September, you are likely to get additional orders from operators who don't serve the United States, which would extend your production schedule beyond the July 1986 date?

Mr. JAFFE. Well, as I stated earlier, Mr. Chairman, China told us they'd come over next month to sign up for the five that they bought in Florida. TAP Airlines is coming in; they have seven. LAB has three or four. Saudia has now told us that they're not going to sell their airplanes, that they're going to retrofit. And as I said, I met with Harry Todd, chairman of the Board of Rohr, and we have agreed to double the tooling so that we can go to seven installations by January 1986. Now, that doesn't mean that we can install 114 or 120, because we have to have some spares. In other words, we'll have to have, probably, for every 10 sets of nacelles, we'll probably pull off 1 or 2 nacelles for spares, what we call Q,E,C's, quick engine exchanges.

I would say that if the ten came over that are not on our list now, we could have 60 done—our program is to have 60 done by May 1986, so that means in the next 5 months after that we could do an additional 35. So, we could be right at 100 by the end of 1986, including spares.

Mr. MINETA. My next questions are addressed to all members of the panel. Would each of you tell us when your companies were first willing to accept orders for hush kits and, at the same time that you first accepted those orders, what were the financial terms for deposits and subsequent payments? And I'd also like to know whether, since that date, you have made any changes in the financial terms.

Mr. Jaffe, would you like to begin?

Mr. JAFFE. Mr. Chairman, from the start we have always had the requirement of either $100,000 downpayment or a $100,000 letter of credit, fully refundable if the STC was not issued. But upon issuance of STC, they had 10 days to pay the additional $400,000. Now, there were two or three exceptions, and the FAA, I believe, was aware of this. A company that had financial distress at the time that couldn't afford to commit the $500,000, they put up their $100,000, but then they agreed to pay $40,000 a month toward the purchase price of that kit until they were retrofitted. So, no one has really gotten on our line for less than a half a million dollars from the time we started.

Mr. MINETA. And when were you first willing to accept orders on your hush kits?

Mr. JAFFE. Five seconds after we announced we were going to do it.

Mr. MINETA. So, that would go back to——

Mr. JAFFE. Fall of 1983.

Mr. MINETA. And have there been any changes in the terms since that time?

Mr. JAFFE. As far as downpayments? No, sir.

Mr. MINETA. Mr. Wagenfeld?

Mr. WAGENFELD. For ADC, Mr. Chairman, we signed our binding contract with the manufacturer in October 1983, and we began accepting orders with the program funding and launch in December 1983. We have always required a minimum $100,000 nonrefundable deposit, and the contracts almost uniformly require a further 10 percent into a blocked or escrowed account 6 months later, another 10 percent, and usually the balance on delivery of the hush kit. The price for the launching customers was $2,520,000; it has risen some amount since that time. We have now 52 orders.

And if I may respond, as I know you are interested in that, we will make an assessment if a substantial number of additional orders should be coming to us after the September 30, 1985 deadline that you propose, to raising the rate of production in order to meet that demand as rapidly as we can. But I would have to estimate now that the ability to do that would be about the same schedule as Mr. Jaffe has estimated. It would all depend on how many orders are received between now and that date and, of course, at that time, we expect at certification that those people who have been waiting and really need this hush kit will then step forward. So, it's a little difficult to project, but we could not, I think, satisfy the demand by yearend.

Mr. MINETA. And your current production rate is what?

Mr. WAGENFELD. We'll be at four per month in August.

Mr. MINETA. That's August, you say?

Mr. WAGENFELD. August 1985, yes.

Mr. MINETA. And your present orders go out to when?

Mr. WAGENFELD. Well, they stretch in a more spaced out pattern right through 1986; 1985 is completely gone.

Mr. MINETA. Mr. Shaw?

Mr. SHAW. As Mr. Wallis had stated in his written submission, we started taking—we announced in November 1983, and we started taking orders right then. Our arrangements were that upon signing of a contract, a letter of credit for $1 million be posted, and when the STC was obtained, then that $1 million would be freed. We would receive the $1 million, but only upon obtaining the STC, and then the balance paid upon delivery.

Now, what we did which was a little bit unique and in an effort to give the program some credibility right from the beginning, we obtained an insurance policy which guaranteed that we would get an STC. Now, this was done only after tremendous effort on the part of our company, Grumman, and the insurance company. But we are confident that when the time comes for us to attempt to obtain the STC, that that will be done.

I would like to point out to the committee that the assumption here, at least to the DC-8, is that those people in the hush kit business—the assumption is that they're going to be certified. We want

to emphasize that if that did not happen, that this whole program would be in a very different posture than it is today. We believe that we have the best technical solution to the problem. We believe that once we are launched in the manner in which we intend to be, that we will have the best long-term solution for the program. And I think the fact that we have Grumman, we have Pratt and Whitney, we have the insurance policy, and we're about to secure our final financing—I think that is going to change the atmosphere in the industry.

Mr. MINETA. Mr. Shaw, when do you expect to obtain certification for your hush kit?

Mr. SHAW. We cannot—we estimated in the beginning that it would take us 11 months from the time that we launched. So, I have to say, from my own knowledge—this is a question, Mr. Chairman, that Mr. Wallis is better prepared to answer than I am. But I would have to say that it would probably be around 11 months. But I would like the opportunity, Mr. Chairman, to answer that particular question to you in writing or, better, to let Mr. Wallis answer it because there may be ways to advance it. But at this moment, I can't see anything more than that.

Mr. MINETA. And do you have any idea how many hush kits you plan to install on a monthly basis?'

Mr. SHAW. Four.

Mr. MINETA. And if a new order were placed with your company today, what would be the date of installation?

Mr. SHAW. Well, I can't answer that, Your Honor—Mr. Chairman——

Mr. MINETA. Your Excellency would be all right. [Laughter.]

Mr. SHAW. I'm more accustomed to presenting things to a court, Your Honor—Your Honor again.

But, Mr. Chairman, if you'll let me—Mr. Wallis is returning this week, and I'd like to be able to put together some kind of a statement from him in response to that question, if that's all right.

[The information requested was not available to the subcommittee at time of publication.]

Mr. MINETA. Mr. Hammerschmidt?

Mr. HAMMERSCHMIDT. Thank you, Mr. Chairman.

Mr. Shaw, let me pursue the Chairman's questioning a little bit further. That's 11 months from when you get your financing?

Mr. SHAW. Yes.

Mr. HAMMERSCHMIDT. Well, I would just comment that it would seem to be a shame if there is advanced technology in this area, for us not to take advantage of it. Would you want to comment on why you think your technology is better?

Mr. SHAW. I, personally, cannot. If Mr. Wallis were here, he would be able to spend quite a bit of time commenting on that question. I can only say from my knowledge—and my knowledge is, again, based on what's been told to me by Mr. Wallis—but it has been stated to him that the FAA investigators have visited our facilities in California, and they came back with a very high opinion of our technology. We believe that on that level, on the technological level, we have an answer that is superior to any other. Our problem has been totally financing, which has been, we believe, due to the marketplace and the problems in the marketplace that

Mr. Wallis' statement describes. We were ready in November 1983 to launch, and we thought we had a reasonable program where customers would come in and place orders with us. In any case, that's behind us. We now have all of these parts ot our puzzle put in place. We have the technology. We're ready to go. We would ask you to consider whether or not it would be in the best interests of this legislation, of the whole program of noise reduction, whether or not you would want to take advantage of the program that we have worked for so long, have invested a great deal of time and money, and we're just on the verge of making a success out of it.

We do have at this moment seven orders and once we're launched, which is going to be this week or next week, then we are going to be in the position of obtaining many, many more orders. So, the problem of the September 30 date is a serious one, and I would hope as we go along in the next several days in talking to members of the committee and members of DOT and FAA, that they will listen to our position on this point.

Mr. HAMMERSCHMIDT. Mr. Shaw, in your testimony that you presented here this morning, on page 3, you express a concern that "a number of exemptions have been granted based on contractual arrangements with hush kit manufacturers who are unlikely ever to deliver a compliant product."

I wonder if you would name those manufacturers, and why do you believe that they will not deliver a compliant product?

Mr. SHAW. As an attorney, I hate to beg off on a very appropriate question. But I have to allow Mr. Wallis to respond to that. So, I will answer or arrange with Mr. Wallis to answer that question, along with the question of the chairman.

Mr. HAMMERSCHMIDT. We would appreciate it if you would respond in writing.

[The information requested was not available to the subcommittee at time of publication.]

Mr. HAMMERSCHMIDT. Mr. Wagenfeld, during our previous days of hearings DOT testified that you were developing a hush kit for the DC-8 that should be certificated by August. Was that a valid statement, and does it still hold true?

Mr. WAGENFELD. Well, I can't speak for DOT. I came from Long Beach yesterday and the parties who are to certify us told me that so long as all the reports are finished by Friday of this week, which we will have done, we will have the first certification for the DC-8 62 at the end of this month. But there is still review of the noise reports and some of the other documents, so it is very difficult to say precisely. I think August is a month or two too long. I think Mr. Scocozza was allowing himself plenty of leeway because, after all, we have to perform. We have to satisfy the FAA with respect to all of the questions concerning the certification. We think we have done that; the test flying is complete. About 75 percent of the reports are final and have been approved by the FAA. My own estimate is the last day of this month or the first week of July.

Mr. HAMMERSCHMIDT. Mr. Wagenfeld, do you agree with those who charged that the noncompliant carriers tried to avoid putting money down for hush kits in the hopes that they could get exemptions without having to make such a financial commitment? Did

most of your orders for hush kits come after the Hawkins-Chiles amendment was passed?

Mr. WAGENFELD. No; I don't agree with that. There may be some carriers who waited until after Hawkins-Chiles. We certainly saw generally a greater responsiveness to signing contracts, but with respect to ADC, which I can speak about only with some real knowledge, we already had some 25 to 30 orders before Hawkins-Chiles was adopted, and moneys paid.

I think that we saw, in our customers, a real effort to comply as long as they had a good, solid feeling that this thing was going to be manufactured and certified. There has been some upsurge after that date, and as you move toward the cutoff at the end of the year, but I don't believe that there has been a widespread attempt to dodge making nonrefundable payments. I don't think that many of the carriers knew what rules were going to be played by. As Mr. Scocozza testified, the FAA had uniformly denied every exemption up to that time. I think all of us in the airline industry expected that they would continue to do so.

Mr. HAMMERSCHMIDT. Mr. Jaffe, you refer to the fact that there were delays in the certification process for the Comtran hush kit. How much longer did the process take than what you had anticipated?

Mr. JAFFE. About 4 months.

Mr. HAMMERSCHMIDT. It is my understanding that there was a contractual dispute between Comtran, Ltd. and SPIA, and that that delayed the installation of the hush kits. Was there a dispute, and has that dispute been resolved?

Mr. JAFFE. Yes, sir.

Mr. HAMMERSCHMIDT. As a result of that resolution of the dispute, have you placed SPIA in as early an installation position as you can?

Mr. JAFFE. Yes, sir.

Mr. HAMMERSCHMIDT. And will you, if you can, accelerate the installation schedule?

Mr. JAFFE. If possible.

Mr. HAMMERSCHMIDT. Thank you, Mr. Chairman.

Thank you, gentlemen.

Mr. MINETA. Mr. Rahall?

Mr. RAHALL. No questions.

Mr. MINETA. Mr. Anderson?

Mr. ANDERSON. No questions.

Mr. MINETA. Mr. Sunia?

Mr. SUNIA. Just a followup, Mr. Chairman. I wonder if Mr. Jaffe has the new date for the installation for SPIA.

Mr. JAFFE. Well, right now they're scheduled for about April of 1986; however, we're trying to see if we can't change that date to an earlier date. Now, if we go to seven a month—I was just looking at the chart, here—I think that they're scheduled—April of 1986, Mr. Congressman.

Mr. SUNIA. Thank you.

Mr. Chairman, I'm a bit confused. This status report that we have here, am I to understand that the hush kit schedule is all off, that these dates are no longer true?

Mr. JAFFE. The one that you have here now is the revised schedule that's been worked out with Tracor and Rohr aircraft.

Mr. SUNIA. So this is the most recent schedule?

Mr. JAFFE. I don't know what you have there, Mr. Sunia.

Mr. SUNIA. It starts off with Iceland Air——

Mr. JAFFE. No, we don't have Iceland Air. You must have DC-8——

Mr. MINETA. Mr. Sunia, I think that's a different schedule than the one that Mr. Jaffe is referring to.

Mr. SUNIA. This was just handed out this morning.

Mr. JAFFE. Iceland Air, I believe, is DC-8.

Mr. SUNIA. Well, the first one that you have on the list is Buffalo Air.

Mr. JAFFE. We have Nautilus, Buffalo, Hill Eight——

Mr. SUNIA. I have Buffalo, October 31. Is that still true?

Mr. JAFFE. No. On one of their planes, Buffalo is already out.

Mr. MINETA. Mr. Jaffe, what Mr. Traynham will be giving you is an FAA schedule, which is the one that Mr. Sunia has.

Mr. SUNIA. I have no further questions.

Mr. MINETA. That's for all companies.

Mr. JAFFE. I understand, Mr. Chairman. I never had seen this list.

Mr. MINETA. Now, what is the question, Mr. Sunia?

Mr. SUNIA. There is no further question. I just had to get an updated list. I'm still working on the whole map.

Mr. MINETA. OK. Thank you.

Mr. Jaffe, let me ask—on page 13 of your testimony, you state that Comtran has "turned down some 10 to 15 operators who have sought 'cheap contracts' to, in effect, buy an exemption to continue operations." I wonder if you could describe the type of contract that these operators had in mind?

Mr. JAFFE. We had numerous offers, Mr. Chairman, where people wanted to sign up for $25,000, $15,000, $10,000, said they'd pay us $50,000. But it's a sort of double-edged sword. We have to work with the FAA, and from the time we started, every contract we've ever written has been sent to the FAA. And we told them that unless they were good faith deposits, we couldn't take them. And some of the people just really—I got the impression—just wanted to fly it out to the end of the year, get an extension, because their airplanes needed repairs or they figured they could fly them here and then take them to Africa or somewhere. But we haven't taken any of those contracts.

Mr. MINETA. Thank you very much, Mr. Jaffe, Mr. Wagenfeld, Mr. Shaw, Mr. Kendall.

Mr. JAFFE. Are we excused, Mr. Chairman?

Mr. MINETA. Yes, at this time you are. Thank you very much.

[The prepared statements of Mr. Jaffe, Mr. Wagenfeld, and Mr. Wallis follow:]

TESTIMONY OF MORRIS D. JAFFE, SR., COMTRAN, LTD.

Mr. Chairman, I am pleased to appear before you and the Members of the Subcommittee to give you a short summary of the status of the Quiet 707 Program, our projections of conversions for the coming year, and to answer any questions you and your Colleagues may have on this complex technology.

Pursuant to FAR 91.303, and in an effort to meet the requirements of the Congress to abate aircraft noise, a consortium composed of Comtran, Ltd., of San Antonio, Texas, Tracor Aviation, Inc. of Goleta, California, Shannon Engineering of Seattle, Washington, and Rohr Industries, Inc. of Chula Vista, California, began the Quiet 707 Program using the best of the engineering state of the art and available technology to meet Congress's mandated time for conversion of the fleet of Boeing 707s to meet DOT aircraft noise standards (Figure 1).

Since that 1983 beginning, the Quiet 707 Program has been on a fast track, though not without its disappointments and unforeseen delays. But, Mr. Chairman, I think I can demonstrate to you and the Members of the Subcommittee that our efforts to overcome these problems have been successful. Through the input of additional resources by all of the parties involved, a plan has been initiated and is now well underway to augment production in order to meet original delivery schedules within a few months.

BACKGROUND

The history of aircraft noise regulations is well known to all present here today and I needn't take up the Subcommittee's time with a recitation of its evolvement. Nonetheless, it should be noted that aircraft noise and its impact on communities in close proximity to the nation's airports is an appropriate cause of continuing concern. We at Comtran felt there was a real need to provide abatement for smaller carriers to afford them the ability to comply with the requirements of the regulations without suffering the severe impact of more costly alternatives which threatened to drive these carriers out of business entirely.

Mr. Chairman, as you know, most of these operations are private concerns with a small number of aircraft. The economic impact of aircraft replacement or engine replacement would force them out of business, and with that failure, a valuable supplemental air service to small markets and users would be lost forever.

The "hush kit" technology is viewed by both the FAA and small carriers as a solution to a complex problem which resulted from FAR 91.303, affecting DC-8 and Boeing 707 aircraft. These specific aircraft provided prior to noise regulation, important service to the industry, specifically the "long thin" routes. Small carriers operating these routes were faced with the problem of trying to maintain this type of service after noise abatement regulations grounded their aircraft on January 1, 1985. The solution was not in aircraft replacement, since there is no true substitute available for the DC-8 or 707. Aircraft with the required range are high priced and generally have too much capacity, such as the 747, DC-10 and L1011.

The other alternative, reengining the aircraft with new quiet engines and nacelles such as the CFM-56, is also a very expensive proposition. CammaCorp has produced and marketed the DC-8-70 series with CFM 56 engines at a cost of approximately $20 million. Boeing also investigated reengining the 707 and proved the concept but concluded that this project was not economically viable.

The hush kit technology was, therefore the only remaining alternative allowing the operator to retain the same aircraft with the same engines using some method to quiet this equipment to meet Stage 2 requirements.

This solution has not only been applauded because of its affordability to the operator but also because it maintains these valuable aircraft in the capital structure of the industry.

The productivity and reliability of the Boeing 707 is remarkable. One recent Air Force study concluded that the KC-135 airframe could be effectively used until the year 2065. The hush kit technology allows this aircraft's useful life to be extended into the next century.

The need for this aircraft's specific features has also been demonstrated in recently released industry studies. Airbus Industries has announced the development of a new four engine jet transporter which bears striking resemblence to a 707 in form and function. Mr. Chairman, we both realize that the cost to a carrier for this new TA-11 which is scheduled to be out of production sometime in the 1990's would be staggering in comparison to a retofitted 707.

To ensure proper compliance with the regulations, the FAA has been consistently stringent in the precertification process regarding the hush kit technology. A stringency which has, and I might add, quite properly, resulted in some delay in the original timetable for certification of the Quiet 707 hush kit. This delay caused by unforeseen technical and material complications resulted in not only the reduced production which we have experienced in our program, but also the additional expenditure of resources by the partners in this consortium. Such expenditures of time

and money have increased the investment in this Program far beyond our original estimates.

Mr. Chairman, more than $50 million had been committed in the development of our hush kit technology before the first modified engine nacelle was installed on a Boeing 707. This figure does not include the cost of money nor does it reflect additional operating and marketing expenses which have totalled in excess of $2 million.

Mr. Chairman, I am sure you and the Members of the Subcommittee can well understand the difficulty in meeting the constant need to fund this project from the initial ground test phase commenced in fall of 1983 through the flight test phase in fall of 1984; culminating in certification of our hush kit. On March 6, 1985, the FAA issued a Supplemental Type Certificate certifying as airworthy and operational in compliance with noise abatement regulations all 707-300 B and C aircraft equipped with the Quiet 707 hush kit. As you know, Mr. Chairman, the Quiet 707 hush kit was the first and to date, the only hush kit to attain certification by the FAA.

That fact alone is testament to the difficulty of the testing process and the thoroughness of the FAA's monitoring of this program (Figure 2).

We have found that the noise abatement technology originally developed by Boeing and NASA in the 1970's had to be updated because some of the materials used have been determined to be unsuitable. In fact, Mr. Chairman, some of the materials used in the NASA design had since been declared to be carcinogenic. We also found that the original nacelle design drawings of the 707 by Boeing for the structure of the nacelle did not exactly match the actual structural components to be modified on the aircraft. Instead of a perfectly round structural component, the actual nacelle was slightly eliptical. This one factor forced expensive retooling and caused production delays.

The tooling process and advanced purchase of hush kit materials to make the program economically viable forced the manufacturers into a real situation of acute risk, especially with the mandated deadline of Jan. 1, 1985 approaching and the fact that there were fewer orders that we had projected.

THE TECHNOLOGY

One reason for the higher than expected costs is that the "hush kit" is a sophisticated system much more complicated than the automobile muffler it is often likened to. The Quiet 707 hush kit has incorporated state of the art technology of acoustic engine linings and engine nacelle design in order to achieve the desired engine noise level, at a reasonable cost to the operator. The concept embodied in the Comtran/Tracor/Shannon project combined acoustical treatment of the engine and nacelle with operational changes such as reduced takeoff weight and reduced landing flap to attain the objective.

Commencing in March, 1984, exhaustive testing on the ground at Rohr's California test facility at Brown Field was monitored by the FAA. Analyses of the ground tests were completed in May of 1984. The results of these ground tests indicated that the design of the Quiet 707 hush kit would effectively reduce the engine noise to within Stage 2 limits. The Flight Test Phase was immediately initiated and Comtran, Ltd. provided a Flight Test aircraft for the Program on May 14, 1984, a former Pan American 707, N886PA. In-flight testing of the modified aircraft commenced on October 23, 1984 and was completed on November 22, 1984.

Mr. Chairman, the FAA put the Boeing 707 through testing as severe and demanding as the original Boeing 707-300 test flight. A dive test to .95 Mach, for example, to test the design for stress and flutter was completed.

FAA representatives were on board to witness tests including aircraft performance, aircraft handling characteristics, and aircraft acoustic noise measurements.

IMPLEMENTATION OF THE PROGRAM

As the Chairman is acutely aware, operators of four-engine aircraft not in compliance with noise regulation standards were slow to take advantage of this compliance option. Even when it was clear that the Comtran Program was going to be the first, if not the only 707 program to be certified by the FAA, orders were slow in coming until it was made abundantly clear by the Chairman and the FAA that deadlines were, in fact, deadlines.

The Chairman's signals, especially his article in AVIATION DAILY, and passage of the Hawkins/Chiles bill requirements that a contract must be held to keep aircraft in the air, were heard loud and clear by the operators. Although this amendment to FAR 91.303 mandated exemption in specific circumstances, it provided third world carriers with needed access to the United States for both passenger and freight service. Without these exemptions which allowed carriers additional time to

retrofit their aircraft, the balance of trade between South American countries and the United States would have been threatened because of the economic impact resulting from eliminating these aircraft from U.S. airports. But Mr. Chairman, of the orders placed with Comtran, none are cheap. On kits ordered prior to STC, we have required an initial payment of $100,000 with the order, and an additional payment of $400,000 after we received certification (STC). On these contracts an additional $750,000 is due when the aircraft is delivered for retrofit and the balance of $750,000 is paid upon redelivery of the aircraft. The price of the Quiet 707 hush kit was initially $2 million for kit numbers 1-25. The price increased on kit numbers 25-50 to $2.25 million, on kits 52-75 to $2.5 million. At the Paris Air Show two weeks ago, Comtran, Ltd. announced a price increase for kit numbers 76-100 to $2.75 million.

I am now pleased to report to you that 707 operators have now placed more than 60 orders, foreign and domestic, for installation of hush kits (Figure 3).

We have turned down some 10 to 15 operators who have sought "cheap contracts", to, in effect, buy an exemption to continue operations. Mr. Chairman, we turned these operators away because we too do not regard that type of compliance as "good faith" compliance under the criteria adopted by the FAA.

I want to emphasize to the Subcommittee that we have been working in close coordination with the FAA to see that all our contracts are in keeping with that strict FAA criteria.

Presently we are installing two aircraft modifications each month. However, we will begin to install three in July and August, and four a month from September through January. In January of 1986 we should be installing at a rate of seven a month and by May of 1986 we will have retrofitted 60 aircraft, to meet our original schedule. In addition, we will have five kits for service and quick engine change (QEC) purposes in order to responsibly support this product in the field.

SUMMARY

In summary, Mr. Chairman, our efforts have been on a fast track for a relatively short time. We have found the financial obligation to be considerable, but the market is there and the product is both high in quality and high in need.

I have nothing but praise for the thoroughness of the FAA and DOT officials in pursuit of the highest standard of compliance. This has been, I think, in the highest tradition of cooperation between regulating agency and private enterprise. If you or any members of the Subcommittee have any questions, I would be most happy to answer them to the best of my ability.

Thank you for this opportunity.

——Quiet 707 Program Organization——

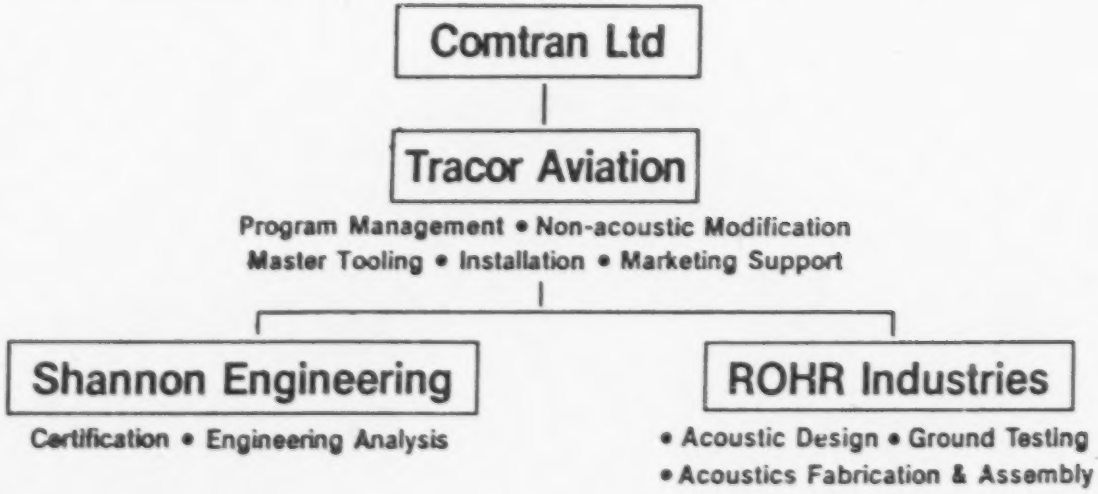


Figure 1.

QUIET 707 PROGRAM

Milestones

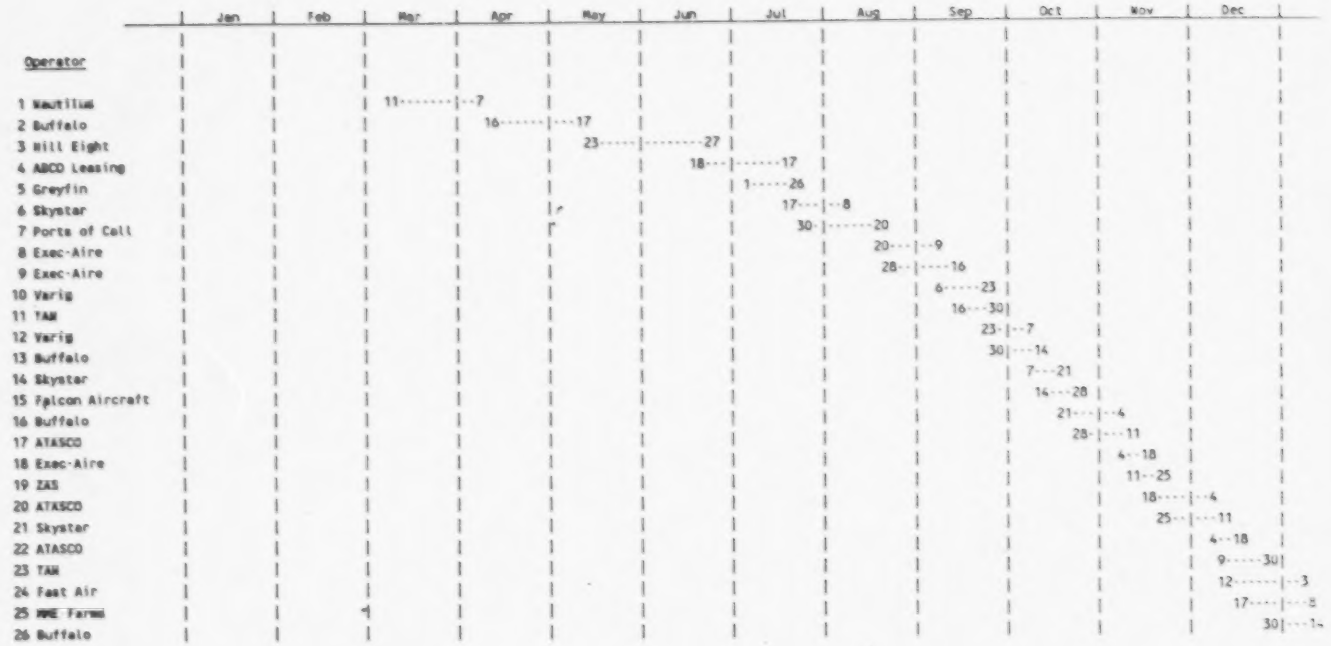
May 1982	-	Application for Supplemental Type Certification submitted by Shannon Engineering
October 1983	-	Comtran, Ltd. Commitment for Ground Test Funding
March 1984	-	Ground Testing commenced at Rohr Industries facility at Brown Field
May 1984	-	Ground Test Analyses Completed
May 1984	-	Comtran, Ltd. and Tracor Aviation Commitments for Flight Test Funding and Production Funding
May 1984	-	Flight Test Aircraft provided by Comtran, Ltd.
June 1984	-	Baseline Flight Testing at Tracor Aviation's facility in Goleta, California
October 23, 1984	-	Flight Testing of Modified Aircraft commenced
November 22, 1984	-	Flight Testing of Modified Aircraft completed
February 22, 1985	-	Supplemental Type Certificate #SA2699NM issued by FAA for the passenger model 707-300 aircraft
March 7, 1985	-	Amendment to Supplemental Type Certificate #SA2699NM issued to include the cargo model 707-300 aircraft

Figure 2.

QUIET 707 PROGRAM

PRODUCTION SCHEDULE

1985



Skystar International Airways, Inc.
Flight Test Aircraft-delivered 3/29

Figure 3, pg. 1

QUIET 707 PROGRAM

PRODUCTION SCHEDULE

1986

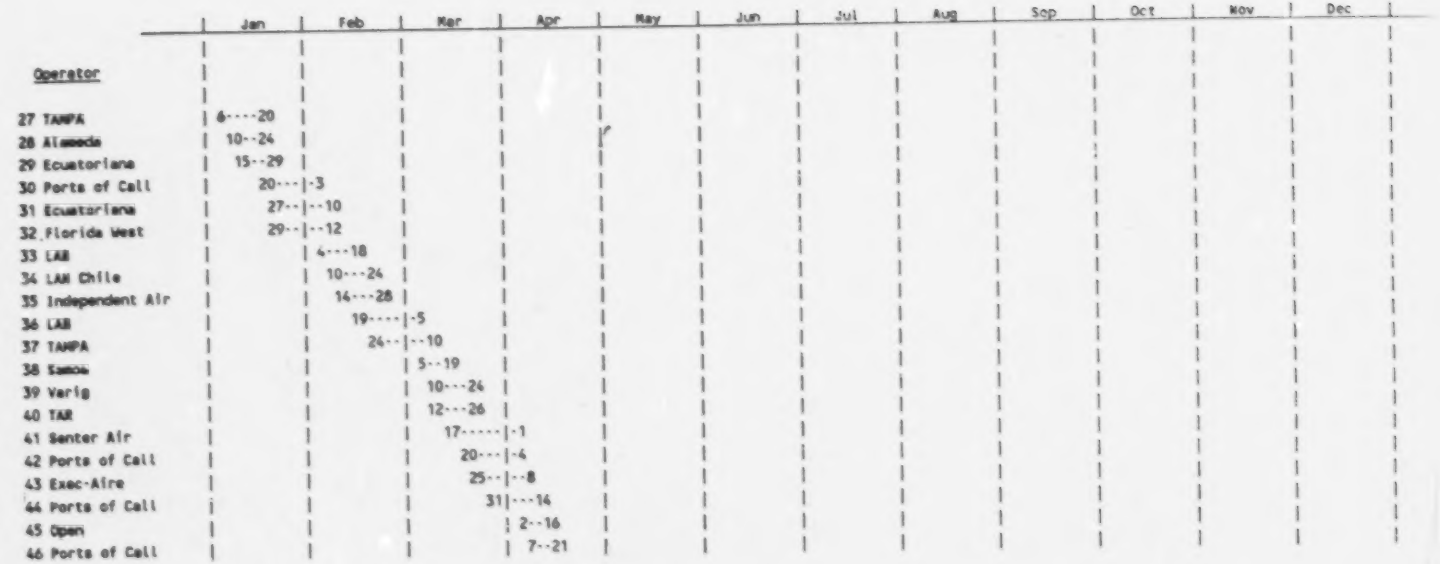


Figure 3, pg. 2

QUIET 707 PROGRAM

PRODUCTION SCHEDULE

(continuation)

1986

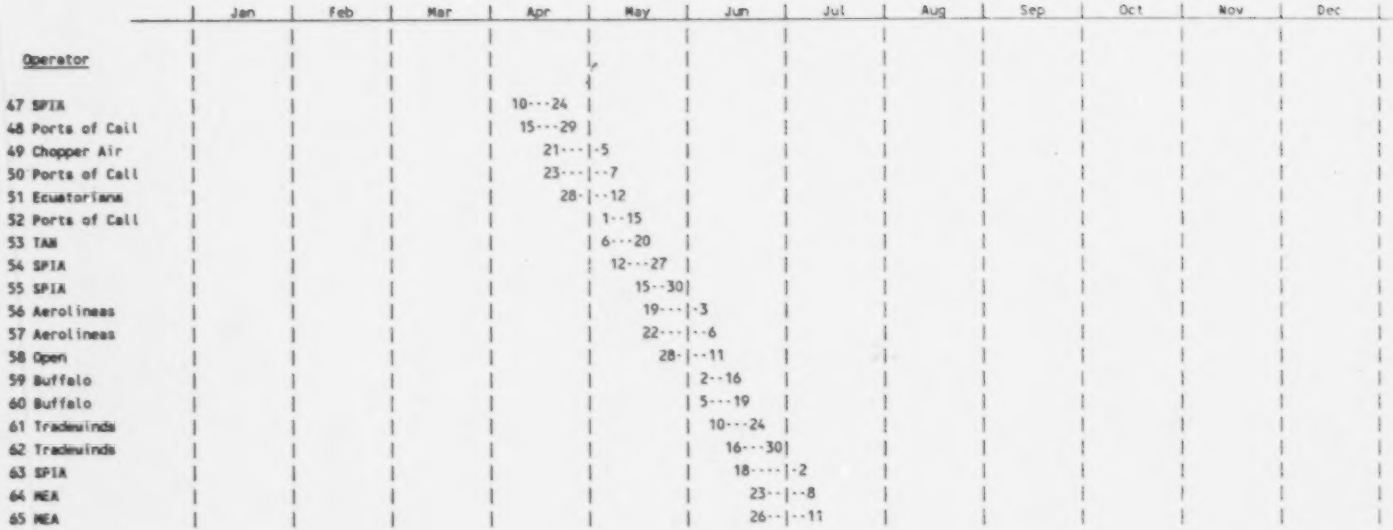


Figure 3, pg. 3

STATEMENT OF ROBERT E. WAGENFELD, CHAIRMAN, AERONAUTIC DEVELOPMENT CORPORATION, AND PRESIDENT, NATIONAL AIRLINES, INC.

My name is Robert Wagenfeld, I am Chairman of Aeronautic Development Corporation ("ADC"), a DC-8-62/63 hush kit manufacturer and President of National Airlines, a small carrier which operates DC-8 aircraft and has applied to the FAA for an exemption. ADC was founded in 1983 by aerospace executives who recognized the industry's need to meet the noise level limitations set forth in Part 36 of the Federal Aviation Regulations. ADC assembled a team of companies on a sub-contract basis to design, manufacture and market a quiet nacelle or "hush kit" for the DC-8-62/63 aircraft. Although there were earlier studies regarding the feasibility of quieting aircraft with hush kits, their actual development was not pursued. Following the severe economic impact of the first fuel crunch which hit in 1973, hush kits for four engine aircraft appeared impractical and uneconomic to the major air carriers in comparison to increasing demand for new and more fuel efficient widebody aircraft with high by-pass ratio engines. This situation continued for the better part of the next decade.

Several fundamental changes had occurred by early 1983 to drastically alter this situation - (1) a significant drop in fuel prices (after ten years of consistent increases), (2) a quantum increase in interest rates, and (3) a very large differential between the capital cost of new and used aircraft.

ADC was formed in response to these changes in the economic environment. In 1984, ADC obtained the necessary funding and engaged in an extensive research and development phase. Prior to this time, no one had developed detailed technical information which would support the certification and production of a DC-8-62/63 hush kit. Although McDonnell Douglas and Boeing had engaged in several U.S. Government funded projects to develop hush kits in the late 1960's and early 1970's, and Boeing had gone so far as to test fly a set of quiet nacelles for the B-707, certification and production of the hush kit was never pursued.

Douglas examined the Boeing reports and concluded that the Boeing design would not work on the DC-8 aircraft, but that it was reasonable to conclude that the DC-8 aircraft could be quieted. The belief that it was technically feasible to suppress aircraft noise with hush kits still did not lead to the development of the detailed technology for the DC-8 hush kit because the cost of this form of noise suppression was viewed as extremely high. In fact, despite extensive research, ADC could not obtain any data reflecting the baseline fly over noise emanating from a DC-8-63 until February 1984 when it operated an aircraft for that very purpose. Although this information is essential for the actual development of hush kits, none of the government or indus-

try studies contained it.

Extensive research was also required because of McDonnell Douglas' continued refusal to provide ADC with any technical or operating information regarding the DC-8-62/63 aircraft. This forced ADC to perform basic structural tests and compile data which Douglas already had in its possession, thus adding great expense and delay to the DC-8-62/63 hush kit program. It was not until ADC developed this information that substantial progress could be made to design, certify and produce hush kits. Only when this technology was developed in 1984 did it became clear that hush kits would provide a cost effective method of achieving compliance with the noise rules. ADC has expended approximately sixteen million dollars to perform the above tests, compile data, design and develop the ADC hush kits. Many millions more in production costs will have to be spent before the hush kits can be placed in service.

The carriers which contracted with ADC and other hush kit manufacturers are generally the smaller, less financially strong carriers. Unlike the major carriers belonging to the Air Transport Association, the economic realities for these smaller carriers gave them only one viable alternative for achieving compliance with the noise rules - the installation of hush kits on

aircraft in their fleet. The larger carriers, whose profits or strong parent corporations permitted them to plan ten years or more in advance had two choices: (1) purchase new 40-120 million dollar compliant aircraft, or (2) fund the development of hush kits for existing aircraft which would bring the cost of compliance to a reasonable level more easily afforded by small carriers. The larger carriers chose the first alternative rather than supporting a program which would help their small competitors. In opposing exemptions and challenging the FAA's criteria for exemptions, the major carriers actions could have the effect of putting small competitors out of business.

The fact that the major carriers made an economic decision to replace their fleets or re-engine their aircraft does not mean that replacement or re-engining are the only acceptable methods of achieving compliance. The acquisition of new technology aircraft gave these carriers many benefits in addition to achieving compliance with the noise rules. These large, financially strong carriers wanted to take advantage of the tax breaks and fuel efficiency that would result from the acquisition of new aircraft.

The smaller carriers, such as several of those supporting the ADC hush kit program, are faced with a completely different set

of economic realities. They simply cannot afford to acquire new high technology aircraft, or re-engine the DC-8-62/63 in their fleets. Like most of the major carriers, smaller carriers have found that the cost of re-engining additional DC-8 aircraft is not a reasonable capital expenditure and simply cannot be economically justified. The difference between the operating cost of a DC-8-63 hush kitted aircraft and a DC-8-73 re-engined aircraft is exorbitant. Re-engining would only make economic sense if fuel costs were to increase for the next ten years by 14% compounded each year, with fuel costing $3.36 per gallon at the end of the tenth year. (See Attachments) Because this is extremely unlikely, re-engining is simply not a viable alternative and has, in fact, been essentially discontinued. Lacking the large amount of capital necessary to replace non-compliant aircraft, smaller carriers turned to hush kit manufacturers, such as ADC, to achieve compliance.

The smaller carriers' selection of hush kits as the method of achieving compliance with the noise rules is a product of economic reality and not a lack of willingness to comply. These carriers have expened substantial sums of money to support the hush kit program. In fact, when examining the proportion of the funds spent by large carriers which can be allocated to achieving compliance in relation to their total revenue, it is clear that

the smaller carriers' expenditures to achieve compliance are of a proportionately equivalent amount. The fact that the smaller carriers' actual dollar expenditure may be lower has absolutely nothing to do with their efforts and willingness to comply with the noise rules. The lower dollar amount merely reflects the different financial and economic postures of the small and large carriers. The small carriers which have dedicated themselves to ADC have made substantial payments as ADC has progressed toward certification and production of its hush kits.

The smaller carriers' inability to comply with the noise rules by January 1, 1985 results from circumstances beyond their control. Compliance would have been achieved if the hush kit technology had been available. As discussed earlier, a major reason that the technology for the hush kit program was not developed earlier is the economic environment of the last decade and the perceived inefficiency of continuing to operate old four engine jets past the mid 1980's.

A reason for delay following the change in the economic environment is the lack of data from the airframe manufacturer. Rather than providing ADC with data it had already compiled regarding the structural and operational integrity of the DC-8 aircraft, Douglas has consistently refused to cooperate. Douglas

claimed that it is not assisting ADC because of potential legal liability. This ignores Douglas' contractual ability to relieve itself of such liability. Douglas has also stated that it promised Congress it would develop only Stage 3 and not Stage 2 aircraft. It is hard to imagine that Congress ever expected that Douglas would place obstacles in the path of DC-8 hush kit manufacturers, but rather that Congress wanted any aircraft Douglas produced itself to be Stage 3 and not Stage 2 aircraft.

I believe the real reason why Douglas has done nothing to assist the DC-8 hush kit manufacturers is economic. Obviously, a successful hush kit project prolongs the usefullness of the DC-8 and might impair the marketing of new aircraft. However, as described above, the larger carriers make their equipment decisions for far different and other reasons than whether or not the airframe manufacturer is assisting developers of hush kits. Furthermore, Douglas' argument overlooks its obligation of product support to those airlines which originally purchased its DC-8 aircraft.

In spite of these obstacles, ADC has developed the technology for hush kits for DC-8-62/63 aircraft, technology which until now did not exist. If Douglas had cooperated with ADC during the development phase, the hush kit project would have been completed

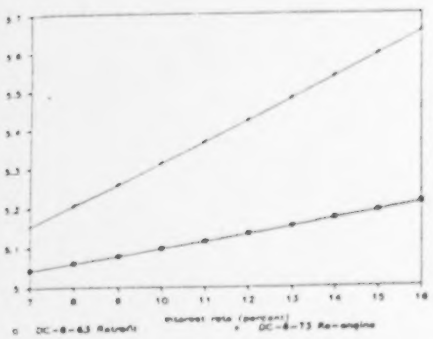
far earlier and the need for exemptions from the FAA would have been substantially reduced, if not totally eliminated.

It would serve no useful purpose to penalize the smaller carriers and the hush kit manufacturers for the economic environment of the last decade and the lack of cooperation of the airframe manufacturer. In spite of the obstacles which have been placed in its path, ADC is on the verge of finalizing all steps necessary to obtain its Supplemental Type Certificate. As soon as this is accomplished, rapid progress will be made in bringing DC-8-62/63 aircraft into compliance without the need for any further exemptions from the FAA.

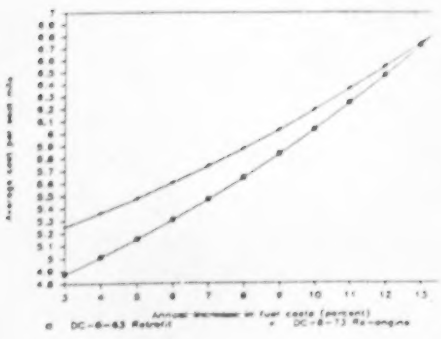
AERONAUTIC DEVELOPMENT CORPORATION, LTD. Page 1

AVERAGE COST PER SEAT MILE

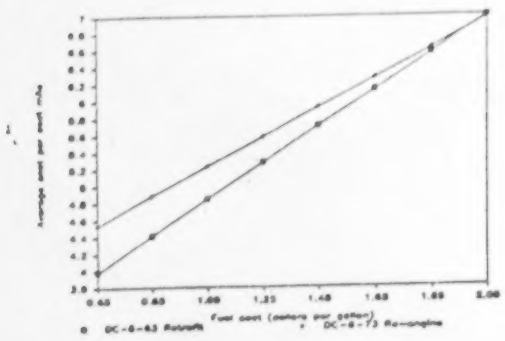
WITH VARYING INTEREST RATES



WITH VARYING FUEL COST INCREASE



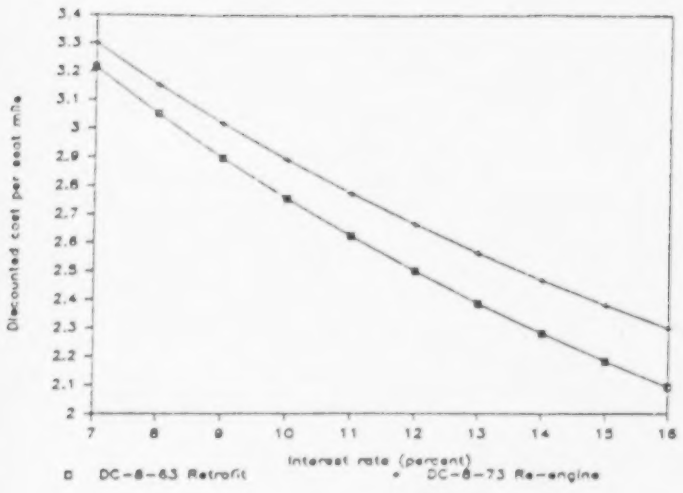
VARYING AVERAGE FUEL COST FOR 12 YEAR PERIOD



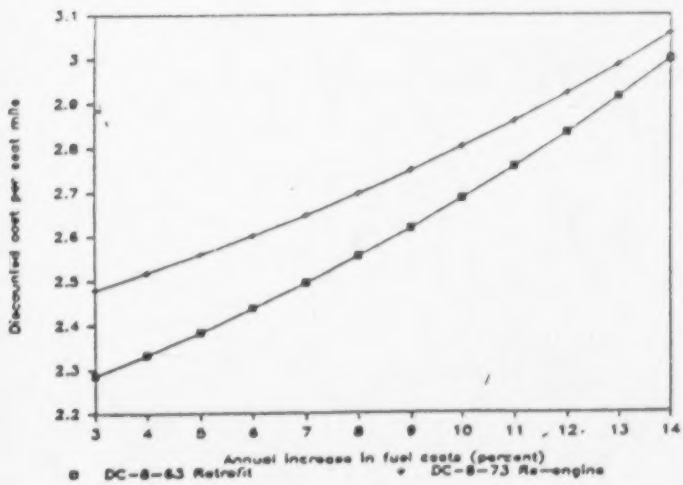
AERONAUTIC DEVELOPMENT CORPORATION, LTD.

DISCOUNTED COST PER SEAT MILE

WITH VARYING INTEREST RATES



WITH VARYING FUEL COST INCREASES



Aeronautic Development Corporation
Comparative Operating Data
Table of Significant Assumptions

	DC-8-63 (retrofit)	DC-8-73 (re-engine)	DC-10-30 Used	747-100 Used	L1011-100 Used	A300-B4 Used	757 New	767 New
Aircraft purchase cost (in thousands of dollars)								
Purchase price	$ 2,500	$18,000	$18,500	$22,500	$15,000	$25,000	$32,500	$40,000
Retrofit cost	3,000							
Spare parts cost	1,375	2,250	2,220	2,700	1,800	3,000	3,250	4,000
Total aircraft cost	$ 6,875	$20,250	$20,720	$25,200	$16,800	$28,000	$35,750	$44,000
Estimated residual value in 12 years (in thousands of dollars)	$ 1,031	$ 5,063	$ 6,216	$ 7,560	$ 5,040	$ 7,000	$ 7,150	$ 8,800
Aircraft characteristics								
Number of seats	210	210	300	440	300	270	185	225
Speed per block hour	410	425	440	460	440	440	440	440
Seat miles per block hour	86,100	89,250	132,000	202,400	132,000	118,800	81,400	99,000
Cockpit crew size	3	3	3	3	3	3	2	2
Cabin crew size	6	6	9	13	9	8	6	7
Operating costs in Base Year (per block hour)								
Crew cost	$ 1,060	$ 1,060	$ 1,340	$ 1,880	$ 1,320	$ 1,180	$ 860	$ 1,020
Fuel cost:								
Fuel consumption (per block hour in gallons	1,850	1,550	2,450	3,200	2,350	1,900	1,200	1,400
Fuel cost (per gallon)	$ 0.90	$ 0.90	$ 0.90	$ 0.90	$ 0.90	$ 0.90	$ 0.90	$ 0.90
Fuel cost per block hour	$ 1,665	$ 1,395	$ 2,205	$ 2,880	$ 2,115	$ 1,710	$ 1,080	$ 1,260
Maintenance	$ 350	$ 450	$ 700	$ 900	$ 800	$ 500	$ 500	$ 600
Insurance	$ 18	$ 60	$ 62	$ 75	$ 50	$ 83	$ 108	$ 133
Total operating cost (per block hour)	$ 3,093	$ 2,965	$ 4,307	$ 5,735	$ 4,255	$ 3,473	$ 2,548	$ 3,013

Variables used in comparative analysis (applied to all aircraft)

Annual fuel cost increase	- 5%
Annual crew cost increase	- 5%
Annual maintenance cost increase	- 5%
Annual cost of capital	- 13%
Block hours flown per year	- 3,300

STATEMENT OF KENNETH WALLIS, PRESIDENT, NOISE LIMITED

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear today on behalf of Noise Limited, a California corporation, (formerly Aeronautical Acoustical Technology Inc. (hereinafter AAT) and a bona fide supplier of hush-kits as determined by the Federal Aviation Administration.

AAT was formed in November 1982 solely for the purpose of producing a hush kit for the DC-8 62/63 service aircraft. AAT's original and continuing objective was and is to achieve maximum sound reduction without degradation of aircraft performance and safety rather than to squeeze under the Stage 2 of Part 36 of the Federal Aviation Regulations governing noise level requirements. AAT's purpose also was to correct a number of design deficiencies inherent in the initial DC-8 62/63 series design and to come as close as possible to FAR 36 Stage 2 compliance without performance and safety give-up.

Mr. Chairman, you have heard much testimony concerning availability of technology sufficient to develop hush kits capable of rendering the DC 8-62/63 series compliant under FAR 36 Stage 2. The report No. FAA-RD-73-131.111, dated February, 1974 and issued by DOT/FAA clearly describes the technology and its potential application at that time - February of 1974. Boeing was then prepared to go to production with 25 firm orders

but I believe achieved only 16 orders since there was no legislative requirement at the time for customers to place firm orders. Following analyses and studies, AAT brought together a unique team of senior Douglas Aircraft design and analytical engineers and commenced detailed design work in September of 1983. At the Pumark used aircraft conference in November, 1983, I announced to the industry the participation of a major manufacturer of AAT's product and also announced that the program was ready to launch. The industry was also told that hardware could be delivered in approximately eleven months from launch.

To initiate the DC8-62/63 Series quiet nacelle program, AAT required 20 firm orders at a launch price of $2,500,000 per aircraft. AAT asked for no down payment in cash but sought a letter of credit in the amount of one million dollars per order. Such a letter of credit could only be drawn by AAT upon receipt of a supplemental type certificate, issued by the FAA. AAT also arranged insurance in the amount of $20,000,000 against failure to achieve certification. The AAT program was designed to minimize customer risk and to tie customers to the program in the event of success. AAT believed this procedure to be in accordance with the intent of Congress. AAT does not believe that a down payment of $75,000 against an order in excess of $2,500,000 is necessarily an indication of good faith. Rather, it could be construed

as the cost of doing business for the year of exemption. AAT also is concerned that a number of exemptions have been granted based on contractual arrangements with hush kit manufacturers who are unlikely ever to deliver a compliant product.

Mr. Chairman, AAT wishes to respond to other testimony given before this Committee. The statement by Mr. Wagenfeld of the Aeronautical Development Corporation that the small carriers' inability to comply with the noise rules by January 1, 1985 results from circumstances beyond their control is simply not correct. Had these carriers responded to AAT by placement of orders, many could have complied. Instead, and with few exceptions, they elected to run out the deadline in hope that the FAA would relax its position. Thereafter, they have largely awaited the outcome of various levels of litigation. Further, and to paraphrase other testimony given to this Committee, if small carriers did not leap at the chance to contract for hush kits early last year, it was only because any sensible company would be hesitant to commit such a large portion of its resources for totally untested devices produced by newly-formed companies. Mr. Chairman, at least one hush kit manufacturer, AAT, required commitment of resources only in the event of the success of its program. Moreover, it has obtained contractual commitments for ground testing by Pratt and Whitney and for manufacture by Grumman Aerospace Corporation - neither of these corporations being exactly newly-formed companies. I am also pleased to report that Grumman Aerospace

Corporation is a significant risk-sharing partner in the $31.50 million AAT program.

Finally Mr. Chairman, we are concerned by the two dates recently introduced by the new FAA criteria, particularly that of the September 30, 1985 STC deadline for hush kit suppliers.

AAT and Grumman have refused to compromise the safety, effectiveness, and integrity of its program in the interests of a premature launch; and although we feel every sympathy with the operators who have placed orders with our competition, we do not believe that it was the intent of Congress to create a monopoly in favor of a lesser solution to the problem. Now that the operators accept that DOT/FAA is serious about noise compliance, we respectfully urge that the arbitrary certification date be set aside in favor of a more workable judgment criteria.

AAT stands ready to do all in its power to implement the DOT/FAA policy and to preserve significant aircraft whose role in world aviation cannot be replaced.

Mr. MINETA. At this time I'd like to call forward Ms. Joanne Young of Barrett, Smith, Schapiro, Simon & Armstrong, and Mr. Frederick Catchpole, president, Skystar International.

Ms. Young, your statement will be made a part of the record, so please go ahead and proceed in your own fashion.

TESTIMONY OF JOANNE W. YOUNG, PARTNER, BARRETT, SMITH, SCHAPIRO, SIMON & ARMSTRONG; AND FREDERICK CATCHPOLE, PRESIDENT, SKYSTAR INTERNATIONAL

Ms. YOUNG. Thank you, Mr. Chairman.

I appreciate the opportunity to appear today to discuss a matter which vitally affects an important but often neglected segment of the airline industry. I earlier submitted my written testimony, and will today summarize the pertinent parts and answer questions raised by the subcommittee last month.

Over the past year, we have represented a number of smaller U.S. and foreign flag carriers, including Tradewinds, IcelandAir, and LAC Airlines, as well as other aviation interests with respect to compliance with the FAA noise rule. We have come to realize it is of great importance to our aviation policy and to our foreign relations that the U.S. implement a policy which encourages compliance, yet does not penalize or put out of business less affluent carriers, nor disrupt international air commerce.

Last month I attended the Armed Services Air Show at Andrews Air Force Base. I was interested to see that the Boeing exhibit included a 707. Boeing is promoting its use for military purposes, and boasts the aircraft has a proven record of performance and will be serviceable well into the 21st century. As Boeing itself states, the 707 and its Douglas counterpart, the DC-8, are still good, serviceable aircraft which do fill a need in the air transportation market. We believe it is in the public interest for the FAA to preserve their usefulness by enabling smaller airlines to bring these aircraft into compliance, and by promoting development of the hush kit industry.

I believe the FAA has made progress toward developing such a policy, and accordingly I will discuss this policy with respect to congressional intent in the public interest, as this subcommittee requested.

The FAA's original policy, reflected in statements to Congress and to ICAO in the period 1978 through 1980, was that it would sympathetically exercise its exemption authority in situations where carriers were unable to obtain hush kits or place them on aircraft in time to comply. In contrast, the policy held by FAA through most of last year was highly unreasonable. It threatened ruin to many small carriers and disrupted U.S. aviation relations with many countries. It was also a totally unreasonable interpretation of the five public interest criteria established in the ASNA Conference report. The FAA sensibly recognized it could not be maintained.

Following the Hawkins-Chiles amendment, in the final days of 1984, FAA made a desperate attempt to conform its position to reason and congressional intent. Unfortunately, due to the lateness of this change the agency did not articulate its reasons for changing policy, and vacillated in its application. Moreover, while its change benefited some smaller U.S. carriers, it discriminated against foreign flag airlines.

Because of these problems, Mr. Chairman, the court told the agency, in effect, to go back to the drawing board and start over again. In doing so, it specifically rejected the argument that exemptions were only appropriate in extraordinary and unanticipated circumstances. Rather, the court continued stays in effect to avoid irreparable injury, and directed the carriers to reapply. The court reaffirmed the FAA's broad power to determine when exemptions are in the public interest. It also gave the agency guidance: It must apply its criteria consistently, explain departures from this consistency—that is, the new consistency—and administer its policy so as to cure any discrimination against foreign airlines.

It should also be noted that nothing in the statutes or their legislative history indicates Congress intended FAA be limited to the five conference committee criteria in granting exemptions. Although the agency has chosen to adopt the Conference language as its standards, there is no legal basis for requiring that each of these factors be met, or prohibiting the agency from considering other factors.

The FAA's decision to issue its guidelines speedily without notice and comment, we believe, is justified in light of the circumstances. FAA issued its standards on a Friday, and under the court's order,

the reapplication of other airlines was due the following Monday. Moreover, the carrier which received an exemption under this order, LAC, was in such extreme financial condition it announced it would shutdown the following Tuesday. We don't believe anyone can second guess the FAA's decision under these time constraints.

At the previous hearing, a number of questions and issues were raised which reflect some of the widespread misconceptions about this matter. While some of the hush kit manufacturers today clarified some of these questions and issues, I would like to also address them.

The first is that the petitioning carriers cynically ignored the noise deadline and are still trying to avoid compliance. On the contrary, these airlines are simply trying to stay in business. Most of these carriers have no alternative but to use DC-8's and 707's. These are the only aircraft suitable in size, range, and cost for their operations. Moreover, even to be considered for an exemption the carrier must have a binding hush kit contract backed by a substantial down payment. For most of these carriers this is a huge expenditure, comparable to a decision by United or Delta to totally re-equip a substantial portion of its fleet. Again, these are primarily very small and poor carriers, having at most three or four aircraft. Indeed, for most of them the hush kit contract is proportionately a greater sacrifice.

It was only rational business sense that carriers were reluctant to sign hush kit contracts until late 1984. These devices were, until then, totally untested and produced by newly-formed, companies unknown to the industry. It was not clear whether the devices would work or how they would affect the carriers' costs and operations. It was unknown which of the suppliers would be certificated and which had the superior product. Moreover, these devices were enormously expensive for such small airlines, nearly $3 million apiece. And most importantly, it was not known if making such an expensive, high-risk commitment would qualify the carrier for an exemption so it could stay in business long enough for the hush kits to be installed.

We believe the FAA could have avoided a great deal of trouble had it announced much earlier that a binding contract would suffice to show good faith. However, as Mr. Scocozza testified previously, it was not until late last December that this was made clear.

Many airlines, in any event, made extraordinary efforts to comply by the deadline. For example, IcelandAir tried in 1979 to convert its fleet to compliant DC-10's and nearly went out of business as a result. Another example is Ports of Call, which has invested over $11 million over the last three years in projects to develop hush kits before 1985.

In the past 6 months, as this subcommittee has heard, the outlook has brightened. Given some assurance they will not be forced out of business, carriers have made the commitment to purchase hush kits. Certification and production of a full product line, though delayed, is now imminent. Many exempted carriers will be in compliance by the end of the year, and the Transportation Department estimates most of the remainder should be compliant by this time next year.

A second major misconception is that it would be unfair to operators who spent large sums complying to extend the deadline for some carriers pending installation of hush kits. This argument turns equity on its head. Large U.S. carriers spent millions of dollars modernizing their fleets for reasons having little to do with noise regulation; rather, fuel efficiency, increased passenger demand under deregulation, other operating efficiencies, and competitive pressure to fly new equipment were factors which far outweighed the specific noise deadline.

Significantly, large U.S. carriers had considerable advantages in bringing their fleets into compliance. The exemption through 1988 of over 400 two-engine jets which U.S. carriers wanted freed up additional capital for the purchase of new equipment. Also, U.S. carriers acquiring new equipment or reengining DC-8's have been able to take advantage of large tax credits and sales of credits. The affected airlines, however, do not have such advantages.

A third misconception is that the small carriers should be blamed for the delay in hush kit availability. The shoe, however, is on the other foot. The critics' implication is that small airlines of various nationalities should have, years ago, somehow banded together and solicited the interest of manufacturers capable of producing the kits. However, at that time large U.S. carriers had long since lost interest; yet, the development of new technology depends on their support.

Significantly, after the major carriers lost interest in hush kits, the FAA—which had funded early developments—lost interest also. A clear and early expression of the present FAA contract standard, we believe, would have encouraged carriers to sign up and would have boosted hush kit development. The FAA's hardline position instead helped frustrate timely development.

We believe the FAA should now do all it can to encourage speedy certification and timely production of hush kits.

Critics of the FAA policy have categorized it as a dangerous precedent which could lead to the erosion of other FAA rules, including safety standards, undermine public confidence in the agency, and encourage operators of exempted two-engine jets to ignore the 1988 compliance deadline. We believe these concerns are grossly exaggerated. Exemptions are normal administrative tools by which an agency conforms its general rules to particular circumstances where fairness requires a different result. The FAA routinely issues hundreds of exemptions every year from their rules, as do other agencies. Moreover, as Mr. Scocozza testified, there is no basis for operators of exempted two-engine aircraft to believe that they will get any extension past 1988. Hush kits for these aircraft have been available for years, and are comparatively cheap, in the neighborhood of $300,000, or about one-tenth the cost of four-engine hush kits.

Finally, critics have wrongly generalized and chastised the small carriers for purchasing jets being sold off at "fire sale" prices caused by the impending noise deadline. They almost imply that this normal, historic operation of the second-hand market is reprehensible behavior that should be punished.

Three observations should be made. First, many of the carriers acquired their aircraft at relatively high prices years ago. LAC, Ice-

landAir, and Tradewinds all acquired their aircraft before 1980 and at prices far higher than those which prevailed later.

Second, the value of the stage 1 aircraft had already been depressed by factors other than the noise rule, such as the development of more efficient aircraft and the rise in fuel prices.

Third, small carriers and new entrants have always depended on second-hand aircraft sold off by major carriers. This was no departure from the normal practice. Indeed, major airlines rely on this second-hand market to, in part, finance their reequipment needs.

We believe the FAA's LAC standards reasonably fulfill Congressional intent and serve the public interest. We hope, however, FAA will use its authority to be flexible and to accommodate the differing circumstances of individual airlines. In line with this and before closing, I would like to offer a few comments on the FAA's standards.

GOOD FAITH COMPLIANCE EFFORTS

Our only reservation about the FAA's good faith standard is the contract cutoff date of March 29. The goal of the FAA should be to promote the speedy development of the commercial means to compliance. The March 29 cutoff date, we believe, unnecessarily discourages carriers from bringing additional aircraft into compliance.

THE FINANCIAL HAVOC STANDARD

The Conference Committee language reflects the kind of serious economic harm a small airline could so easily face if it had to ground or withdraw from U.S. service a substantial part of its fleet. Judging financial havoc is a complex matter, and by drawing the line at only two specific tests, the FAA is denying carriers an opportunity to demonstrate other circumstances that might be equally devastating. For instance, for a foreign carrier from a country with restrictions on the export of foreign currency—for example, IMF restrictions—cessation of U.S. operations may deprive it of U.S. services needed to pay for its hush kits and other equipment needs.

We believe the FAA should be encouraged to fine tune and adjust this standard to specific circumstances.

VALUABLE AIRLINE SERVICE

In classifying all service existing as of the end of last year as "valuable," the FAA adopted an approach entirely consistent with the congressional policy set forth in the Deregulation Act and the International Competition Act. Congress dictated that it was the marketplace, not a regulatory agency, that was to determine the value of service. In today's competitive environment it must be assumed that air service is serving some public need or it would not be there. Moreover, foreign carrier service pursuant to bilateral agreements must be presumed valuable, as these rights are exchanged in negotiations between governments. Those who would have FAA define valuable service as unique or irreplaceable sole service are advocating an approach even more restrictive than the route regulation that Congress abolished in 1978.

As 1985 draws to a close, a substantial number of carriers will be fully compliant. However, we would urge the FAA not to cut off relief to those carriers who, because of delays beyond their control, will not receive their equipment until 1986. As the FAA required these carriers to contract with hush kit suppliers to continue operations, it should be reasonable and extend the deadline where manufacturer delays prevent full compliance by the end of the year. Pulling the plug on these airlines so close to compliance would be unfair and contrary to the goals which the FAA's new policy is intended to advance.

Mr. Chairman, we stand ready to work with the FAA to implement and improve its policy as the industry meets the overall goal of noise abatement.

Thank you. I am prepared to answer any questions you may have.

Mr. MINETA. Mr. Catchpole?

Mr. CATCHPOLE. Mr. Chairman, I'd like to thank you all for allowing a small carrier to speak to you today.

Basically, I have come before you to speak about the subject of exemptions for noncompliant aircraft. You are all aware of the five criteria that were recently established by the FAA for use in determining when to grant noise exemptions. Of those five criteria, only one prevents Skystar from being granted relief, the FAA's new definition of "valuable air service", which requires that an airline had to have operated in 1984, unless it is deemed to provide "essential air service."

Skystar International was formed in 1982 and acquired its first aircraft that year. It was founded to provide a unique role, that of providing low-cost air service to pilgrims of all religious faiths for travel to various religious shrines throughout the world. I might add that most of the pilgrims who travel on these flights are senior citizens on fixed incomes. Since 1982, Skystar has been contracted by Fatima Travel to provide economical pilgrimage travel for a Catholic lay organization, the Blue Army, which has some 25 million members. Since that time, Skystar has carried over 20,000 people to various religious shrines in Portugal, France, Italy, and the Mideast.

In August 1983, Skystar acquired its first air carrier FAA operating certificate. However, in late 1983, Skystar's Civil Aeronautics Board application efforts were facing difficulties. I was employed by the company in January 1984 and corrected the deficiencies that the CAB had noted. Skystar was then issued a CAB certificate of public convenience and necessity late in 1984. Also in 1984, the FAA required Skystar to undergo complete and total recertification. Skystar's recertification was activated by the Civil Aeronautics Board at 4:45 p.m. on December 31, 1984, just as the CAB went into sunset.

Concurrently, with the issuance of the FAA certificate, the FAA's Environmental Office issued a denial to Skystar's request for an exemption. That was based upon "good faith." Skystar obtained a court-ordered stay and has been operating religious pilgrimages in accordance therewith since early 1985.

Skystar took delivery of the world's first noise compliant 707 in mid-April, 1985. A picture of it is on the cover of Aviation Week

and Space Technology of May 27. This aircraft was originally scheduled to be delivered to Skystar in December 1984. Skystar's other aircraft were originally scheduled to become compliant between February and June 1985. Due to production delays this was not possible; and, as a result, Skystar has had to request exemptions from the FAA. The FAA has been most unsympathetic. For example, in April, Skystar was denied the opportunity to use another noncompliant aircraft for a 1-week period to cover the loss of approximately $250,000 in revenue while the only compliant 707 in the world was required by contract to perform international certification tests which were conducted by the British Government in Seattle. If Skystar did not have to rely on the services of others, we would have a completely compliant fleet. However, as you are well aware, particularly with the performance of Government contracts, delays do occur.

From transcripts and media reports concerning the earlier portions of this hearing, I understand that Mr. Scoccoza of DOT testified that all aircraft will probably become compliant next year. I want to remind you that there are still approximately 461 two- or three-engine aircraft operating on what they call "small community exemptions" that will be with us until 1988. Furthermore, approximately 100 of the aircraft considered too noisy of the four-engine variety, these being 707's, are now reappearing with military markings at your local civil airports, being operated by the Air National Guard. These aircraft have not been modified and will not be modified to meet the noise criteria, nor are they required to do so.

Meanwhile, after this latest round of denials by the FAA, Skystar is concerned for its very survival. Should Skystar fail, your constituents will suffer, as Skystar has carried religious pilgrims from many of your districts—including yours, Mr. Chairman—and others are scheduled from some of your districts in the near future.

Skystar is denied the opportunity of an exemption solely because of the "valuable airline service" definition, and it is the only common carrier denied an exemption solely on that basis. The reasoning behind the FAA's definition of "valuable air service" is hard to fathom. Clearly, the FAA, in determining what service was "valuable," did not look at the type of service provided by Skystar, nor did it address at all the importance or uniqueness of the services provided by the carrier. I submit to you that the assumption stating that all service conducted in 1984 is valuable and essential to the public is not correct. Otherwise, one could argue that the Government should provide financial assistance to those companies such as North Eastern/Air One, Capitol, and others who operated in 1984 and then were bankrupted, thereby depriving the public of what the FAA would deem to be a "valuable air service." Similarly, the Government might be expected to intervene in the strike with the world's largest carrier, United, if the service were in fact irreplaceable.

I submit to you that the FAA erred seriously in defining that particular criterion. This error has only damaged one carrier, and that is Skystar. As I stated before, Skystar has conducted low-cost religious pilgrimage flights from some of your home towns, and we will be conducting flights in the near future from others. Since no

other carrier provides a low-cost religious charter service, it is submitted that Skystar provides a unique and valuable air service to the public.

Skystar, because of recent exemption denials—last Friday—must now seek relief in court. Assuming that the court rules in Skystar's favor, finding that the FAA again has acted inconsistently or in a discriminatory manner, Skystar cannot possibly recover damages caused by the FAA through disruption of marketing plans, expenditure of legal fees, and such. Is Congress prepared to pass appropriate legislation to provide airlines, such as Skystar, monetary relief for inconsistent or discriminatory actions of Government agencies such as the FAA?

The ironic fact, in view of all the problems caused by noise legislation, is that Boeing 707 aircraft are approximately 12 PNDB's, perceived noise levels, noisier than the maximum allowable by law, and produce less noise than people are exposed to at rock concerns. The difference between the maximum noise output allowed by law and that which an unmodified aircraft produces is difficult for the human ear to perceive.

I understand that you have the responsibility for public health, safety, and welfare. When you passed the noise law in the early 1970's you felt you were living up to that responsibility. However, it is my personal belief, and that of many other Government agencies, that the grounding of perfectly good airplanes is not the answer. Airlines such as Skystar, which provide unique and valuable airline service and are doing everything within their power to become compliant with the new noise standards, should not be penalized. Nor, we grant, should the local citizens near airports. We suggest that an alternative might be that money from the aviation trust fund might be made available to provide low-cost or no-interest loans to those who live near airports to allow them, at their option, to acoustically treat their houses. By installing such insulation, it would also help in energy conservation. Further, I would suggest that in those areas that have been determined to be not only high noise but also high accident potential areas, that the Federal Government work with the local governments to provide zoning so that will help a land owner develop his land in a manner compatible with aircraft operations.

I submit that airports are valuable assets. They are growth inducers. If you protect them, you will protect your constituents.

The primary point that I have tried to make today is that Skystar has been hurt, and we believe that it is unjustified.

Mr. MINETA. Before proceeding to my questions, I want to make it clear that my opposition to noise exemptions does not mean that I do not appreciate the benefits of the air service which the companies represented on the panel would like to provide. Certainly, if there were no other considerations, I would be delighted to have the traveling public receive the benefits of the air service. However, the benefits of the proposed air service are not the only issue. We must consider the needs of the millions of people living around airports who are subject to the emotional, physical, and financial burdens of the excessive noise. And these burdens are greatly increased by the operation of the four-engine aircraft which are the noisiest in the fleet. In 1976 and again in 1980, the FAA and the

Congress decided that the citizens living around airports would be given relief from four-engine jets, but not until 1985. This extended deadline gave the airlines and the passengers a long period of continued service with noncompliant aircraft. But our decision was that after January 1, 1985, we were going to take account of the interests of the people affected by noise and that after that date, no service—no matter how beneficial—could be provided unless the operator had brought its fleet into compliance. I think that this long period for compliance indicates that we have bent over backwards to treat the aircraft operators and the traveling public fairly, and I don't see how we can be asked to sympathize with those operators who bought their aircraft well after the compliance dates had been announced.

So while I appreciate that noncomplying service can benefit the passengers who use it, I think that persons living around airports have waited far too long to receive the benefits of quieter aircraft.

Turning now to questions, Ms. Young, in your testimony you state that you have reservations about the DOT-FAA cutoff date of March 29, 1985, for signing hush kit contracts. The testimony of the panel that we heard from earlier this morning suggests to me that if an operator were to enter into a hush kit contract today, the hush kit might not be installed until well into 1986. Are you suggesting that we should give exemptions to anyone that is willing to sign a hush kit contract today? And couldn't this lead to the operation of hundreds more noncomplying aircraft for a year or more?

Ms. YOUNG. Mr. Chairman, we believe that it is in the public interest to help these hush kit manufacturers develop and commercially produce their equipment. One has already been certificated and, as the others testified today, certification of their products is imminent. They also testified that their financial stability was very important to keeping these deadlines. We believe it is in the public's interest that as many aircraft as possible be brought into compliance at the earliest possible date; and that by encouraging the support of hush kit manufacturers through contracting, we believe that goal will be met.

Mr. MINETA. Mr. Catchpole, in your testimony——

Ms. YOUNG. I might also, if I may, just add that we're talking about relatively few aircraft that are likely to be included. I believe Mr. Scocozza mentioned that only three hush kit contracts were entered into after January 1 and before March 29. So these additional aircraft, we believe, would help the manufacturers.

Mr. MINETA. Mr. Catchpole, in your testimony you state that B-707 aircraft are only "12 perceived noise decibel levels noisier than the maximum allowed by law." My understanding is that an increase of 10 in the decibel level is perceived as a doubling of noise. Is this your understanding?

Mr. CATCHPOLE. One of your assistants explained that to me this morning; however, I have not understood it to be that way. There are various ways to measure noise, and I'm not sure if we're mixing apples and oranges.

Mr. MINETA. That's right. There are a number of ways. But when you talk about the absolute of 12 perceived noise decibel levels, you're not measuring it by a cumulative measure. You're talking

about absolute numbers of 12 decibel noise levels. I'm asking, is 10 considered to be the doubling of that noise level?

Mr. CATCHPOLE. According to what I learned from one of your assistants this morning, it is. However, one of the points I was trying to make, Mr. Chairman, is that if you and I were to stand on the end of a runway and listen to a four-engine jet taking off that's compliant and a four-engine jet that's not compliant, it would be difficult for us in close proximity to differentiate the difference between the two.

Mr. MINETA. Well, I suppose if we were to sit there and listen to two aircraft that were close to that complying margin, and one that is not, your point would be well taken. But I would suggest that today most of those that are not complying are well off the mark, and that they would be relatively easily distinguishable as to what is considered a "noisy jet" and what would be a "compliant jet." And I think that's the point that was established in the legislation back in 1979.

Mr. Catchpole, our data indicates that Skystar purchased their 707 in 1984.

Mr. CATCHPOLE. No, sir, it's 1982.

Mr. MINETA. It's 1982? All right. And what was the price that was paid for the aircraft?

Mr. CATCHPOLE. At that time, it was in excess of $800,000.

Mr. MINETA. And you were aware at that time that there was a provision in law as it relates to aviation noise, and that that airplane would not be able to operate after January of 1985?

Mr. CATCHPOLE. Yes, sir. In fact, we entered into our first hush kit contract in early 1984 with the guarantee and assurances from another manufacturer that we would have a hush kit in place in October of 1984.

It was never Skystar's intent to violate the law. That's why we contracted for the first test aircraft. We had anticipated taking delivery of this airplane in December and operating compliantly, and then our next aircraft would come on line—compliant—in March of 1985, and the next one shortly after that, and shortly after that. However, as Mr. Jaffe pointed out, the actual supplemental type certificate was delayed approximately 4 months; and by the time the learning curve and all that takes place, and actual delivery, I took delivery of the airplane in the middle of April. In the meantime I have to have some form of revenue to keep the company alive, and I was operating on a court-ordered stay. The other aircraft was scheduled in the February-March time frame but now it is delayed to August. So, you know, I am faced, right in the middle of my peak——

Mr. MINETA. This is the one that's undergoing tests?

Mr. CATCHPOLE. No. I have one compliant. Fifty percent of my operating fleet is compliant. All of my aircraft have firm hush kit contracts. I've got in excess of 1/2 million—I'm coming into the peak travel period, which I expect it to be compliant in, and I'm not. And last Friday I received notice that my noncompliant aircraft would have to be shut down. Now I'm faced with doing a minimum of two aircraft's worth of work on one aircraft or else, hopefully, being successful in court. It's a terrible situation to find yourself in, to try to subcontract the work out. There's no other lift

available for me to subcontract it out, especially since United is on strike.

Mr. MINETA. Ms. Young, a story in yesterday's Aviation Daily stated that Transbrazil and Sterling had gotten a stay from the U.S. court of appeals and that the stay will probably last until 1986. My understanding is that the effect of the stay is to remove FAA's frequency limitation for flights into Miami and Bangor. Am I correct that the stay applies only to these two cities?

Ms. YOUNG. Well, again, I can't really comment on the Aviation Daily article. I was out of town yesterday. I can say that the court has entered a stay for Sterling and Transbrazil Airways and has, I believe, scheduled the case to be heard during their November-December calendar period. So it would appear likely that any final decision that would lift that stay would come sometime in 1986. I do know those two carriers were challenging the FAA's interpretation of the frequency provision of the Hawkins-Chiles amendment, which did deal with Miami and Bangor.

Mr. MINETA. Let me again ask if the effect of the stay is to remove the FAA's frequency limitations only as it applies to Bangor and Miami?

Ms. YOUNG. I know that the legislation that is being challenged is applicable only to Miami and Bangor Airports.

Mr. MINETA. So you don't know?

Ms. YOUNG. Oh, excuse me. If the question is, does the court-ordered stay have a frequency——

Mr. MINETA. Does it apply to Bangor and Miami?

Ms. YOUNG. It would appear to, because that's what the legislation that's before the court applies to, sir.

Mr. MINETA. I understand the disagreement——

Ms. YOUNG. I might add that, to my knowledge, Sterling Airways only operates to Miami; and Transbrazil, the only other airport they operate to is Stewart Airport in New York, which we believe is another example of an airport that clearly has an economic, not an environmental, problem. It would seem to be a logical reliever airport for New York City cargo traffic. That, again, is the only other airport that I believe Transbrazil operates to.

Mr. MINETA. Now, I understand that the disagreement which led to the court case involves the type of frequency limitations which FAA can impose under the Hawkins-Chiles amendment. Is this correct?

Ms. YOUNG. I think it involves the definition of frequency under that legislation. My understanding is that the FAA strictly counted the number of operations in 1984, at those airports in issuing the exemptions as opposed to looking at the frequency of those operations which were, you know, on a weekly or twice weekly basis.

Mr. MINETA. What about type of limitation? Is that a question in that lawsuit? As contrasted with any frequency limitation?

Ms. YOUNG. I think it's strictly a question of the number of operations allowed. Essentially, the FAA, under its interpretation of the Hawkins-Chiles legislation, gave these carriers only a handful of flights for the entire calendar year, whereas toward the end of 1984 their frequency of operations was much greater. And both of them being foreign carriers, they're literally unable to have any

U.S. base of operations with such a limited number of flights permitted.

Mr. MINETA. Should there be any prohibition on limiting frequency? Should there be any prohibition putting limitations on the frequency?

Ms. YOUNG. Well, again, my understanding of the legislative history behind the 1979 law is there was no indication of limiting these carriers to previous frequencies. And I know the Hawkins-Chiles legislation—I believe that particular provision was actually inserted by Miami International Airport because it wanted to make clear that they were not interested in stealing other airports' traffic. So I don't believe that there's any real congressional history which supports these claims of frequency limitation.

Mr. MINETA. Let me ask, do either of you think that the FAA has legal authority to impose frequency limitations on exemptions that are issued under the Aviation Safety and Noise Abatement Act? Ms. Young?

Ms. YOUNG. I don't think we would contest that. In the case of the Hawkins-Chiles legislation I would think they would be very much bound by the legislative history of the Hawkins-Chiles legislation. And that, as I say, the only intent there was to limit frequencies such that Miami would not be the beneficiary of other airports' traffic.

Mr. MINETA. Mr. Catchpole?

Mr. CATCHPOLE. No, I don't contest it. In fact, the only thing I would like them to do is recognize—for example, in 1984, our religious pilgrimage flight was conducted in our aircraft, but it was handled by another carrier. All I want to be able to do is operate at that same frequency on that particular aircraft. So I have no problem with the FAA limiting or with their power to limit the number of operations. I just feel it should be equitable.

Mr. MINETA. Mr. Hammerschmidt?

Ms. YOUNG. Mr. Chairman, may I simply add on that point that the purpose, we believe, of the Hawkins-Chiles provision on this frequency was to maintain the level of service as opposed to the number of operations.

Mr. MINETA. When you say "present level of service," you mean what?

Ms. YOUNG. Frequency, the way it's generally considered in the industry—frequency, number of flights per day or per month or per week, whatever the period of time is that's taken into account.

Mr. HAMMERSCHMIDT. Ms. Young, would you have any objection to adoption of NACA's suggestion, that September 30, 1985 be established as the final certification deadline for hush kit manufacturers, and that December 31, 1985 be the final date for compliance by airlines?

Ms. YOUNG. Congressman, it seems to me that the key question here is when these manufacturers, these hush kit manufacturers will be certified. If indeed there is a large number of competing manufacturers for the various aircraft types FAA-certified by September 30, and these devices can be installed by the end of the year, no. But the jury is still out on that, and really, the ball's in the Government's court.

Mr. HAMMERSCHMIDT. When do you expect all the noncompliant aircraft of your clients to be brought into compliance with the noise rule?

Ms. YOUNG. All of the airlines we represent have firm contracts with nonrefundable deposits in place for these hush kits. The manufacturers, one of which has already been certificated—Comtran/Tracor—and the others are telling our clients that certification is imminent. Most of our clients have fairly early installation dates in the lineup and we're hopeful that by the end of this year or early 1986 they will be able to have the hush kits installed.

Mr. HAMMERSCHMIDT. I take it from that response that your clients would not seek new exemptions from the noise rule when their current ones expire. Is that correct?

Ms. YOUNG. Well, again, I think the FAA has indicated that if an airline has a firm contract with a manufacturer that has been certificated by September 30, if the technology can't actually be bolted on by the end of the year, it will be reasonable and extend the deadline, I believe into 1986, until the installation can be effected. That's the new "LAC standard" and we believe, assuming certification can be accomplished by September 30, that's a reasonable position.

Mr. HAMMERSCHMIDT. As you know, the conference report of the Noise Abatement Act set forth five criteria to govern the granting of exemptions. One of those was a requirement that an applicant for an exemption demonstrate that it is making a good-faith compliance effort. I wonder how you can take the position that one who bought noncompliant aircraft a year or two before the noise deadline made a good faith compliance effort?

Ms. YOUNG. Congressman, summarizing my written testimony, for most of these small carriers the only type of aircraft that is affordable, that can meet their range needs, their size needs are the DC-8's and 707s'. In most instances, that's the only kind of equipment that is possible for them to operate. We believe that when Congress passed the noise law in 1979, hush kits were clearly contemplated to be available by the 1985 deadline. Nevertheless, Congress was extremely concerned and sought assurances that if suppliers were delayed in making this technology available, the FAA would be reasonable in using its exemption authority. It seems to me that small carriers with these limited alternatives who do not have the option of buying Boeing's newest equipment line or spending $18 million to re-engine an aircraft have a right to rely on the hush kits. We believe that they've acted responsibly in contracting. Many of them put money down with virtually unknown suppliers at a time when the FAA had made no announcement that a contract would allow them to continue operating. They have put money down on devices that, in many cases, have not been tested. They don't know what the impact on their cost structure will be. I think that under those circumstances, their good-faith effort to comply is clear and certainly ranks right up there with the large U.S. carriers, who have many more financial resources to come into compliance.

Mr. HAMMERSCHMIDT. So you don't feel that the unavailability of hush kits was due, at least in part, to the failure of the noncom-

pliant carriers to support their production, the production of those hush kits?

Ms. YOUNG. No, sir, I don't at all. I believe that when Congress exempted over 400 two-engine jets, the large U.S. carriers that basically dictate what the manufacturers are going to produce—when they lost interest, the small carriers scattered around this country and around the globe were really at the mercy of the technology development and had—I think that they contracted as soon as it became reasonable for a businessman to do so.

Mr. HAMMERSCHMIDT. I wonder if you could estimate how much carriers save by buying noncompliant aircraft a year or two before the deadline rather than compliant ones.

Ms. YOUNG. Well, again, as I testified, most of our carriers bought this aircraft before the noise rule was made applicable to foreign international operations. Many of them, in fact, paid as much as $6 million to carriers like American and United Airlines that were disposing of them for fuel efficiency reasons.

Mr. HAMMERSCHMIDT. Mr. Catchpole, you state that Skystar's service should be considered valuable because it was found to "fulfill a unique role, that of providing low-cost air service to pilgrims of all religious faith." But other airlines with compliant aircraft offer low-cost charters to many groups. If you were unable to provide service, couldn't one of these airlines offer their low-cost charters to these religious groups? And I wondered who provided service to these groups before Skystar began operating.

Mr. CATCHPOLE. Well, Skystar has been providing it since 1982 through the use of other carriers with our assets. To my knowledge there are no others, but I would like to comment just a second on compliant aircraft.

A Boeing 767 which has just been granted an extended range capability across the ocean—I noted it has had a couple of engine failures in 45 days, but that's another thing—that aircraft is in excess of $50 million a year. If you take a reasonable interest rate since 1982 of around 15 to 18 percent for new carriers, you're probably going to pay just in interest alone $26,000 a day, in that neighborhood. The total debt service on a hush kit and a compliant 707 will run about $2,000 a day.

I don't think—if you have to have a carrier become compliant, I don't think that they can provide the same type of cost structure and the same type of service to people, particularly the elderly on fixed Social Security incomes and things of this nature, whenever they have interest payments well in excess of $26,000 a day on those aircraft.

Mr. HAMMERSCHMIDT. Fine. Well, to get back to the question, do you think charter services could fulfill the role that you're filling now with your noncompliant aircraft?

Mr. CATCHPOLE. No, sir. It's not available out there now.

Mr. HAMMERSCHMIDT. And then, to get to your response that you just commented on about the 767, it's true that large carriers have economic advantages and incentives that smaller air carriers lack. But economics aside, I wonder if it doesn't seem unfair for the Government to substantially alter its policy after the majority of the industry has gone to the trouble of complying?

Mr. CATCHPOLE. Well, sir, we entered our first hush kit contract almost a year before the law became effective. In fact, we had a nonrefundable hush kit deposit in that case which we lost.

I am for compliance. I am for providing for the health, safety, and welfare of the people surrounding airports. However, I'm also for doing it and providing the public an efficient cost as well, and reaching out to particular groups that might otherwise not be able to afford the service. So I'm caught in some kind of a dilemma here in that I'm pro on one side and I'm also against myself on the other. But I feel that if technology were available, I wouldn't be here today. And the fact that it has been delayed has put a number of us in this dilemma, and I just don't see any reason why we can't extend the deadline in order for the production lines to catch up with us.

Mr. HAMMERSCHMIDT. Well, I wonder why you couldn't, or the carriers you represent, lease compliant aircraft while the noncompliant aircraft is being retrofitted?

Mr. CATCHPOLE. There are a number of reasons that make it economically difficult for a small carrier. One is that the compliant aircraft that we would have to lease in that particular case would be of a different type; it would probably be a 747 or an L–1011 or a DC–10. This would require expensive safety testing, again, with the FAA; recertification; retraining of crews, et cetera. And from an economic point of view it's just impossible for the small carriers to do that. We don't have the investment behind us.

Mr. HAMMERSCHMIDT. In your statement, you state that "It is my personal belief and that of many other Government agencies that grounding perfectly good airplanes is not the answer." I wonder if you could enlighten the committee by telling us what other Government agencies share your belief on that?

Mr. CATCHPOLE. I am retired from the Navy. When I was in the Navy, I got assigned the task of helping the Navy formulate its Air Installation Compatibility Use Zone Planning Program. This was so that we could minimize the impact of the noise on the communities. Being basically what I call a plank owner and that, I know that the Navy, the military, those agencies feel for various reasons—including aircraft performance, et cetera—that it's more important to protect the people through proper zoning, proper land management around these assets.

Mr. HAMMERSCHMIDT. Thank you, Mr. Catchpole. Thank you, Ms. Young.

Ms. YOUNG. Thank you.

Mr. MINETA. Mr. Sunia?

Mr. SUNIA. No questions.

Mr. MINETA. Mr. Lightfoot?

Mr. LIGHTFOOT. Thank you, Mr. Chairman. Just one quick question to Ms. Young.

Relating to Mr. Hammerschmidt's question, one of the other criteria that is involved is provision of valuable airline service to the public. My question is, are you basically saying that any service that was provided as of January 1 would be under that term, valuable? Does all service fall under that term, or how do you perceive that?

Ms. YOUNG. Well, I think, Mr. Congressman, that given the Airline Deregulation Act, essentially turning over to the marketplace what service would be provided, and that coupled with the fact that foreign flag service is generally provided pursuant to bilateral agreement where U.S. carriers are getting valuable rights in other countries, that's a reasonable interpretation. The service wouldn't be there if it wasn't valuable to the people using it.

Mr. LIGHTFOOT. OK. Then, as a followup to that, if we have, say, more than one or two carriers servicing the same market or the same airport, I guess the problem is how do you define the term "valuable"? Who is valuable and who isn't?

Ms. YOUNG. Well, again, I think that competitive air service, which was the thrust of the Deregulation Act, is very much in the public's interest, both for consumers and shippers. And it seems to me that if there is more than one carrier in a market, it's being supported by the public and it is valuable to that segment of the public.

Mr. LIGHTFOOT. One final question, and I'll address this to both of you; I'd like both of you to respond to it.

If we do, in fact, convince the FAA to become more lenient in their noise regulations and get them to back down just a little bit, and I think we've seen evidence of this happening in some areas in other ways, aren't we really opening up a Pandora's box of local noise restrictions, airport closings after the sun goes down, all types of things that will make it detrimental to you folks in the air carrier business as well as the traveling public?

Ms. YOUNG. Well, if I may, Mr. Congressman, that option has been available to local airport operators for some time now. In fact, very few have seen it in their interest or the community's interest to impose local noise rules. They have that option. Indeed, at one point some of the trade associations were encouraging them to do so; they just didn't. So our feeling is that in a balancing process, the service is valuable to them and they're willing to wait out the technology to bring total fleets into compliance.

Mr. CATCHPOLE. It's our experience, Mr. Congressman, where the local communities restrict or have more stringent rules or regulations, we avoid that area or we find some way to extract that market out of there to a less sensitive airport. When we have 50 percent of our fleet, which is two aircraft right now, compliant, it creates quite a juggling act. I have a little juggle coming up next week with Minneapolis-St. Paul, for example. Our one aircraft which is dedicated to the religious pilgrimage is not permitted to go in there, so therefore we will have to somehow meet and match and shift the schedule around. A few weeks ago we went into Oakland to bring a group out of San Jose because San Francisco International itself prohibited noncompliant four-engine aircraft.

So we adapt around those airports that are most sensitive, and I don't feel that we would be exposing any of the airports that don't—or that have a real critical problem—we would not be exposing them by increasing the number of exemptions granted.

Mr. LIGHTFOOT. I guess the point I was trying to make, and then to get your opinion on is, if we do allow some of the noncompliant aircraft to continue to fly, paraphrasing an old statement that "hell hath no wrath like a woman scorned," hell hath no wrath

like someone who builds their house at the approach end of an airport and then complains about the noise of the airplanes. That goes back to your statement; I think that zoning is the proper way to control this anyway. As a pilot, it concerns me when we take off and we suddenly idle back on power to keep the noise down, when you know that the component of lift is what keeps you in the air. But people in those areas are expecting relief through the FAA noise regulations and if they don't feel that they're getting it in the very near future, there is a possibility they will go to their municipalities and say, "Look, the Feds aren't doing anything about it; let's do it here in town where we can control the councilmen and so on and do it," and be a detriment to the whole system in the long run.

That was only my point. I just wondered what your opinion was. Thank you.

Ms. YOUNG. I might add that I think, generally speaking that the Congress and the Federal Government should be very pleased so far with the efforts at noise abatement. The fact is that legislation and the regulations have been extremely effective, now with virtually every operator of noncompliant equipment having entered into a binding hush kit contract. It's simply a question of time before all of these fleets are going to be fully in compliance.

Mr. LIGHTFOOT. Thank you.

Thank you, Mr. Chairman.

Mr. MINETA. I think that's a point well taken. As I stated in my opening statement for these hearings, there is a question of whether the Government's rules, regulations, or deadlines can be viewed as credible when exemptions are issued at the last minute to companies which knew of compliance deadlines but, nonetheless, purchased noncompliant equipment. Where do we draw the line? I can think of any number of FAA rules for which someone would say, "Compliance will put me out of business." "Compliance will result in a loss of valuable service." But in those circumstances we say that if you cannot comply and operate according to the regulations, you cannot operate. And what's so unique about this particular FAA rule? I recognize that it's not a direct safety rule, but there are numerous instances where someone might say, "I want to train my pilots or train my flight attendants a little bit less, and there won't be any direct impact on safety; and if I don't get an exemption I'll go out of business, so give me a break."

My question is, what is the impact of the tone that is set here? Does it not impeach the credibility of the regulatory process, by telling people that they don't have to view deadlines or rules as a sure thing?

Let me at this point thank both of you for testifying.

Before going on to our last panel, Mr. Catchpole—I take it you've been soliciting letters from your pilgrims during their flights?

Mr. CATCHPOLE. I made one phone call to a priest who was very taken with the pilgrimage program from your district. They have taken upon themselves to basically ask you to review your posture in that area and look at this as a unique and a valuable service. The only reason, I guess, that you've been singled out is because you're the Chairman of this committee, and the FAA has indicated

to me that you're probably the biggest thorn in their side. [Laughter.]

Mr. MINETA. And as far as the letters I've been getting from Michigan and Ohio and New Jersey——

Mr. CATCHPOLE. There's 25 million Blue Army people out there that feel that this is a very valuable service. I'm not sure where they're located——

Mr. MINETA. Have you indicated that I'm antireligious?

Mr. CATCHPOLE. No, I have not.

Mr. MINETA. Or anti-Catholic?

Mr. CATCHPOLE. I have not indicated anything at all, sir, other than the fact——

Mr. MINETA. Well, you ought to take a look at some of these letters that I've been getting, Mr. Catchpole.

Mr. CATCHPOLE. Well, I apologize if some people have been misled or whatever. The only thing——

Mr. MINETA. I don't mind hearing from constituents; I hear from them all the time. But frankly, some of this garbage that I read in here is garbage, and I don't appreciate it.

Mr. CATCHPOLE. I understand, sir. The only thing that was asked—this one priest asked—I want you to understand this—that he felt our service was valuable. And that's all that's been expressed, and that's all that should have been expressed to you from any of the people that have talked to me. How you got those letters from other States I haven't the slightest idea, in all honesty.

Mr. MINETA. All right.

[Ms. Young's prepared statement follows:]

STATEMENT OF JOANNE W. YOUNG, PARTNER, BARRETT, SMITH, SHAPIRO, SIMON & ARMSTRONG

Mr. Chairman and Members of the Committee: I appreciate the opportunity to appear today to discuss a matter which vitally affects an important but often neglected segment of the aviation industry. Over the past year, we have represented a number of smaller U.S. and foreign carriers (including Tradewinds and LAC) as well as other aviation interests with respect to compliance with the FAA noise regulations. I have come to realize that it is of great importance to our aviation policy and to our foreign relations that the U.S. implement a policy which encourages compliance with the noise rules, yet does not penalize or put out of business less affluent air carriers, nor disrupt international air commerce. I believe the FAA has made progress toward developing such a policy, and accordingly I would like to discuss this policy with respect to Congressional intent and the public interest, as this Committee has requested.

The FAA, over the last several months, has been trying to correct an earlier, highly unreasonable exemption policy. This policy threatened grave harm to domestic and international aviation, and was inconsistent with Congressional intent. The FAA sensibly recognized that it could not be maintained.

This was not the FAA's original position. Rather their original policy was reflected in statements to Congress made by the FAA Administrator and the Secretary of Transportation during consideration of the Aviation Safety and Noise Abatement Act of 1979 (ASNA), as well as statements made to the International Civil Aviation Organization (ICAO) the following year. They gave assurances that the FAA had exemption authority and would sympathetically exercise that authority in situations where carriers were unable to obtain hush kits or replacement aircraft in time to comply with the deadline. Much later, and on the eve of the noise deadline in 1984, FAA shifted to a policy of rigidly denying all exemption petitions. By November 20, 1984, it had denied 51 petitions and granted none. Between November 20 and December 28, it granted only two exemptions, apparently holding to a position of granting exemptions only in unique or extraordinary circumstances.

Not only was this rigid policy threatening ruin to scores of small carriers and disrupting U.S. aviation relations with many countries of the world, it was also a total-

ly unreasonable interpretation of the five public interest factors established by the ASNA Conference Committee. The Conference Committee urged exemptions for: (1) Smaller carriers; (2) making a good faith compliance effort; (3) where needed technology is delayed or unavailable; (4) where rigid adherence to deadlines could work financial havoc; and (5) deprive the public of valuable airline service.

However, DOT's dismissal of all petitions without regard to the carrier's need or individual circumstances rendered this Congressional admonition meaningless.

The FAA's intractibility last year necessitated Congressional mandate of exemptions at two airports—Miami and Bangor—that were particularly threatened by the wholesale exemption denials. The intent of the measure's co-sponsors was that carriers servicing these airports would automatically be found to have met four of the five ASNA criteria, and would demonstrate "good faith compliance effort" by contracting for hush kits or replacement aircraft.

Following this legislation, in the final days of 1984, FAA made a desperate attempt to conform its position to reason and Congressional intent, and to avoid broad harm to a segment of the industry. Unfortunately, due to the lateness of this change, the agency did not articulate its reasons for changing policy, and vascillated in its application of this policy. Moreover, while its change of position benefitted some smaller U.S. carrier needing an exemption was able to meet the FAA's test for "financial havoc" because inevitably all its U.S. operations would be affected, virtually no foreign carrier was able to do so.

Because of these problems, the U.S. Court of Appeals told the agency in effect to go back to the drawing board and start over again. The Court continued stays which it had earlier granted the carriers to avoid irreparable injury, and made the stays effective pending new applications to the FAA. It rejected the argument pressed by three large U.S. carriers that exemptions were only appropriate in "extraordinary and unanticipated circumstances" or in the case of "anomalities and inequities." The Court reaffirmed the FAA's broad power to determine when exemptions are in the public interest. It also gave the agency guidance: it must apply its criteria consistently, explain departures from this consistency, and administer its policy so as to cure any discrimination against foreign carriers.

The standards announced in the Lineas Aereas del Caribe, S.A. ("LAC") order represent, I believe, a reasonable effort to face and deal realistically with a problem, and to do so consistently with Congressional intent. The FAA's decision to issue its guidelines speedily, without notice and comment, is justified in light of the circumstances. The FAA had to announce its policy promptly, because the Court gave it only thirty days between the date of its opinion (March 29, 1985) and the deadline for the carriers in the three lead cases to file reapplications. The FAA issued its standards on a Friday, and the reapplications of Tradewinds, Airmark, and Carefree were due the following Monday, with others due soon thereafter. Moreover, the carrier which received an exemption under this order, LAC, was in such extreme financial condition that it had announced it would shut down the following Tuesday. How can anyone second guess the FAA's decision under those time constraints?

Before discussing the particular standards the FAA has adopted, we will clear up some serious misconceptions which have been advanced as arguments for a highly restrictive exemption policy.

The first misconception is that it would be unfair to operators that have spent large sums complying with the noise rule to extend the deadline for some carriers pending installation of hush kits. This argument turns equity on its head. Large U.S. carriers spent millions of dollars modernizing their fleets for reasons having little to do with noise regulation. Because of the substantial increase in fuel prices, new generation aircraft became much more economical to operate than older four-engine jets. Moreover, they were better suited to the U.S. market and increased passenger demand forecasts under deregulation.

Large U.S. carriers had considerable advantages in bringing their fleets into compliances. Congress exempted until 1988 over 400 two-engine jets which U.S. carriers desired to keep in operation. This freed up additional capital for purchase of new equipment. In addition, three-engine aircraft could be retrofitted much more cheaply (about $500,000) than four-engine jets ($2.5 to 3 million). U.S. carriers acquiring new equipment or re-engineering DC-8s have also been able to take advantage of huge tax credits and sales of credits. The affected carriers, however, are not being given similar advantages.

In any case, it is absurd to speak of unfairness and competitive injury when the giants of the industry are enjoying their most successful year on record.

Another serious misconception is that carriers seeking exemptions are trying to avoid compliance. On the contrary, they are simply trying to stay in business. Most of these carriers have no alternative but to use DC-8s and 707s retrofitted with hush

kits. These are the only aircraft suitable for many operators. Newer compliant equipment is too large, too expensive, or both. Moreover, even to be considered for an exemption, the carrier must have a binding hush kit contract and a substantial down payment. For most of these carriers, this is a huge expenditure, comparable to a decision by a United or a Delta to totally re-equip a substantial portion of its fleet with new equipment. If smaller carriers did not leap at the chance to contract early last year, it is only because any sensible company would be hesitant to commit such a large chunk of its resources for totally untested devices produced by newly-formed companies.

Many airlines, in any event, have made extraordinary efforts to comply by the deadline. For example, Icelandair tried in 1979 to convert its fleet to compliant DC-10s—and nearly went out of business as a result. Another example is Port of Call Travel Club, which has invested over $11 million over the last three years in projects to develop hush kits before 1985.

A third misconception is that the smaller carriers are to blame for the delay in hush kit availability. The shoe, however, is on the other foot. The large U.S. carriers, having lost interest in the older four-engine jets for economic reasons, withdrew the market support necessary for the development of hush kits. The implication of this argument is that the small, competing carriers of different nationalities should have, five years ago, banded together and solicited the interest of manufacturers capable of developing and producing hush kits, at a time when the U.S. industry had lost interest in them, and it appeared that the price of fuel would continue to rise indefinitely, making these aircraft economically impossible to operate. Such a suggestion is patently unrealistic. Small U.S. and foreign carriers have never been able to spur the development of new technology. Rather, this depends on the support of major U.S. carriers.

Some small carriers, in fact, did attempt to secure hush kits in the late 1970s, and were refused. Tradewinds contacted Boeing in 1978 regarding hush kits for its B-707-300 series aircraft, and was told that even if the devices were produced, they could not be fitted onto the carrier's particular model of engine.

Finally, critics have wrongly generalized and chastised the small carriers for purchasing four-engine jets being sold off by major carriers at "bargain basement prices" caused by the impending noise deadline. They almost imply that this normal, historic operation of the second-hand aircraft market is reprehensible behavior that should be punished. Three observations should be made on this point. First, many of the petitioning carriers acquired their aircraft at relatively high prices years ago. LAC, for instance, contracted for its aircraft in 1979 at a price tag of $6 million. Second, the value of the Stage 1 aircraft had already been depressed by factors other than the noise rule, such as the development of more efficient aircraft and the rise in fuel prices. Third, small carriers and new entrants have always depended on second-hand aircraft sold off by major carriers. This was no departure from the normal practice. Indeed, the major carriers depend on the second-hand market to, in part, finance their continuing reequipment efforts.

It is difficult to believe that anyone could seriously think it unfair to allow smaller, less affluent carriers an extension of time in which to bring their aircraft into compliance by the only means reasonably available. Not only is it fair, but is is very much in the public interest to do so. Specifically, here are three of the many public interest goals served by exemptions: (1) It is in the public interest to allow competitive airline service and new entry. This is the policy mandated by the Airline Deregulation Act and International Transportation Competiton Act, passed almost simultaneously with ASNA. (2) It is in the public interest to encourage noise compliance at the earliest possible date, and to promote the commercial development of the technology needed to facilitate compliance. Last weekend I attended the Armed Services Air Show at Andrews Air Force Base. I was struck by Boeing's promotion of the B-707 for military application. It stated that this aircraft "has a proven record of performance" and "will be serviceable well into the 21st Century." These are still good, serviceable aircraft, and the FAA must do everything possible to encourage the small entrepreneurs who are the key to the aircraft's future usefulness. (3) It is in the public interest to maintain an aviation policy that can be respected by other nations, and which accords to their carriers the same operating rights that they accord ours.

The FAA's new standards should be judged in light of the public interest, and of the intent evidenced by Congress in its Conference Report language. I believe these standards reasonably fulfill Congressional intent, and serve the public interest. I would hope, however, that the FAA can be flexible enough to accommodate the differing situations of individual carriers.

SMALL CARRIERS

The FAA's classification of small carriers recognizes the unique difficulties faced by these carriers, which have fewer alternatives for compliance and fewer resources with which to accomplish it than do the larger carriers. While the nine aircraft or 1,500 employee classification may be a reasonable standard in most cases, I believe the FAA should recognize there are other carriers very dependent on U.S. operations who, because of their poor finances, the need for cash flow and U.S. dollars, or the economic condition of their home nation, are effectively no better off than smaller carriers.

GOOD FAITH COMPLIANCE EFFORTS

The FAA sensibly adopted one firm test of a carrier's good faith compliance effort. If a small carrier has committed itself to several millions of dollars per aircraft for hush kits, it has certainly made a good faith compliance effort. This particular Congressional criterion does not warrant or necessitate an inquiry into a carrier's previous commercial decisions. A regulatory agency should not attempt to make value judgments about a carrier's motives as to when and why it acquired its aircraft or began its service. A firm contract is a tangible demonstration of intent to comply with the rule, and is all the agency can or should look to.

Our only reservation about this FAA standard is the cut-off date of March 29, 1985. The goal of the FAA should be to encourage compliance with the noise rules, and promote the speedy development of the commercial means to that end. However, the cutoff date may unnecessarily discourage carriers from bring additional aircraft into compliance. Rather than giving the encouragement the small hush kit entrepreneurs need, this seems to be a unnecessary discouragement.

TECHNOLOGY DELAYED OR UNAVAILABLE

The FAA has recognized the fact which was obvious to smaller carriers all along: "the commercial availability of the hush kits has been delayed until recently." Assertions that the technology for hush kits was developed years ago, and Boeing offered to accept orders for hush kits in the mid-1970s is purely academic when no hush kits were certificated, much less commercially available until earlier this year. The FAA's exemption standards must be related to conditions that exist in the real world.

FINANCIAL HAVOC

Congress recommended exemptions where denial "could work financial havoc." It did not say "corporate death" or "bankruptcy." This language reflects the kind of serious economic harm which a small carrier could so easily face if it had to ground or withdraw from U.S. service a substantial part of its fleet. Far from making this criterion "meaningless," as some have asserted, the FAA has recognized that loss of 20 percent of a carrier's operations or a financial loss equal to 10 percent of its assets, will inevitably spell grievous financial harm for most cariers seeking relief. Although a much larger carrier might have the ability to withstand such a blow, a smaller carier might never recover.

Judging financial havoc is a complex matter, but in drawing the line at only two specific tests, the FAA is denying carriers an opportunity to demonstrate other circumstances that might be equally devastating. For instance, for a foreign carrier from a country with restrictions on exportation of foreign currency, cessation of U.S. operations may deprive it of U.S. dollars needed to pay for its aircraft and equipment. Or, for a company with years of successive net losses, a financial blow less than the FAA's standard might nevertheless trigger bankruptcy. We submit the FAA should be encouraged to fine tune and adjust this standard to the specific circumstances of individual carriers. The Court of Appeals did not foreclose the agency from reaching different results or modifying standards where circumstances require, but rather simply stated that departures from the norm should be explained.

VALUABLE AIRLINE SERVICE

In classifying all service existing as of the end of last year as "valuable," the FAA has adoped an approach entirely consistent with the Congressional policy set forth in the Airline Deregulation Act and International Air Transportation Act. Congress dictated that it was the marketplace, not a regulatory agency, that was to determine the value of service. In today's environment, it must be assumed that air service is fulfilling some public need, or it would not be there. Those who would have

the FAA define "valuable service" as "unique" or "irreplaceable" are advocating an approach even more restrictive than that which Congress abolished in 1978.

Moreover, foreign carrier service pursuant to a bilateral must be presumed invaluable. Bilateral air rights are granted in exchange for valuable reciprocal rights for U.S. carriers. Moreover, in its 1980 rulemaking to extend the 1985 deadline to foreign cariers, the FAA specifically included, as a factor to be considered in granting exemptions, "whether service pursuant to a bilateral agreement" would be jeopardized.

In addition to the standards, the FAA has proposed certain restrictions, including a curfew on operations between 10 p.m. and 7 a.m. We do not believe this is necessary. At airports where night operations cause noise problems—and this is not the case with many airports—the proprietors are capable of adopting local rules on the hours of operations. Where night operations are no problem, airports should not be deprived of service by a generalized federal restriction.

In sum, I believe the FAA has adopted a policy which reasonably fulfills Congressional intent, serves the interest of the entire industry, and will help to promote the earliest possible compliance with its noise regulations. As 1985 draws to a close, a substantial number of these carriers will be fully in compliance. However, I would urge the FAA not to accede to pressure to cut off relief to those carriers who, because of delays beyond their control, will not receive their equipment until 1986. As the FAA has required these carriers to contract with hush kit suppliers in order to continue their operations, it should be reasonable and extend the deadline in the case where a manufacturer's delay may make a carrier unable to comply by the end of 1985. Pulling the plug on those carriers when they are so close to compliance would be contrary to the goals which the FAA's new policy would help to advance.

We stand ready to work with the FAA to implement and improve its policy, as the industry meets the overall goal of noise abatement.

Mr. MINETA. Let me call forward the next panel. Richard H. Judy, director, Miami International Airport; B. W. Ziegelaar, director of marketing for Bangor International Airport; Claire Barrett, assistant director of aviation and external affairs, Massachusetts Port Authority; and Bernice Carbullido, director, Washington liaison office, Office of the Governor of Guam.

Mr. Reaveley, I guess you're here in the place of Mr. Judy? Fine. Why don't we go ahead and have you start off? Mr. Reaveley is the chief of the aviation development office of Miami International Airport. We will go ahead and make Mr. Judy's statement a part of the record, so please go ahead and proceed in your own fashion.

TESTIMONY OF PETER REAVELEY, CHIEF OF AVIATION DEVELOPMENT, AVIATION DEPARTMENT, MIAMI INTERNATIONAL AIRPORT; BERNICE CARBULLIDO, DIRECTOR, WASHINGTON LIAISON OFFICE, OFFICE OF THE GOVERNOR OF GUAM, ON BEHALF OF GOVERNOR RICARDO J. BORDALLO; CLAIRE BARRETT, ASSISTANT DIRECTOR OF AVIATION FOR EXTERNAL AFFAIRS, MASSACHUSETTS PORT AUTHORITY; AND B.W. ZIEGELAAR, MARKETING DIRECTOR, BANGOR INTERNATIONAL AIRPORT

Mr. REAVELEY. Thank you, Mr. Chairman. It's a pleasure to be here today to discuss a matter which is of great importance to us in south Florida and particularly to Miami International Airport, as you know.

As an initial comment, I would like to commend the DOT on the stand it has recently promulgated in the LAC order. We have some reservations, but it's a tremendous improvement over previous policies. I will precis my written paper orally and present the written paper into the record.

Last October, as you know, we faced a crisis at Miami as a result of the FAA's exemption policies. We feel very strongly that we do not have a noise problem at Miami. We have less than two noise complaints a week; that's less than 100 a year. Seventy-five percent of those complaints are about aircraft running up in the maintenance bays of the major U.S. airlines, and that's with 1,000 flight operations a day—less than 2 noise complaints a week, so that's quite good. We can justify everything we say technically.

We felt very strongly that any action that would ban our stage 1 aircraft at Miami would severely affect our economy; it would severely affect the economies of the Caribbean and Latin American nations. We are the major financial and commercial gateway to the Caribbean and Latin American. We have over 100 international banks, over 200 multinational corporations. We have about 100 flights a day into that region, and it's very, very important to us and to them to maintain the level of service.

Last year, the middle of last year, we had approximately 50 airlines operating into Miami with stage 1 707's and DC-8's and of those, approximately 30 were quite small primarily cargo airlines operating 707's and DC-8 freighters. They would have been completely put out of business. Fifty percent of our international cargo would have been put out of business, and cargo aircraft are particularly critical in that region. You have many small nations, for example, Costa Rica: We have a Miami-Costa Rica once a day, a Boeing 727 with Eastern; a once a day Boeing 727 with LACSA, the airline of Costa Rica. Neither of those 727's can handle excess baggage, let alone cargo. As a result, LACSA has two DC-8 freighters which it uses to take everything that's made in the U.S. down to Costa Rica, and they export tropical fruit and vegetables, leather goods, and things back to the United States. They desperately need those DC-8 freighters.

We handle large volumes of perishables, tropical fruit and vegetables, seafood, 40,000 head of cattle the year before last, none of which can go into the belly of passenger planes. Even if you had wide bodies on many of those routes it would be impossible because of the traffic levels.

Many of those nations base their aircraft in Miami because of the big maintenance bases in Miami. They have no facilities for engine overhaul, electronics overhaul, hydraulic aircraft maintenance, so we have a large number of aircraft maintenance companies in Miami who look after these aircraft on behalf of all those little airlines down there. Also, of course, a large number of customs brokers and forwarders. We felt that it was just totally unreasonable to be in a position where 24 cities in that region would have lost their freighter service. We pointed this out at meetings to the FAA, butas of October of last year, of 96 petitions for exemption none have been granted. As you know, we spoke to Senator Hawkins and to Senator Lawton Chiles and to the entire south Florida congressional delegation; we also spoke to every major political subdivision in greater Miami and every chamber of commerce. We got the unanimous support of every politician in the whole of south Florida, and politicians are very attuned to the economic impact of their airport on the community. They are also very finely attuned, as you know, to the environmental impact of

their airport, and they are able to make a decision. So when they supported us, we felt it was a very important decision by our whole community.

In October, Congress mandated relief to Miami International and also to Bangor, ME, and we ourselves owe a great deal of gratitude to Senator Paula Hawkins and to Senator Lawton Chiles.

During 1984 the hush kit industry was developing well. It had tremendous cash flow problems. It had some technical problems, but they were all really aiming at the 1988 date, the ICAO date of 1988, and the U.S. date of 1985 was only one date on the way to 1988. We, in September of last year, September of 1984, held a major hush kit seminar in Miami to which 50 airlines came and all the hush kit manufacturers came, and they were there all day, from 8 in the morning until 8 at night. Many of the hush kit manufacturers said to us afterward that it was the finest thing that anyone had ever done for them. Many of them were signing contracts right there and then, and I think Tracor mentioned here today that the seminar really got the whole thing going. We feel that we created the hush kit industry. Twenty-five of our airlines at Miami have hush kit contracts; 10 of them, in fact, are with Tracor.

We feel that the inconsistent decisions which the FAA was creating during the last year led to the Hawkins-Chiles amendment and also led to the Federal courts overturning many of those FAA decisions. It's quite clear that small carriers in the United States, and particularly in Miami, like Challenge and Rich who also serve Miami with cargo planes into the Caribbean and Latin America, have no alternative. They need that 34-ton payload airplane. They need hush kits; and I'm sure in reading the history of the legislation, that back in 1976, when the original legislation was enacted, you also foresaw that.

The large U.S. carriers, of course, would like to see everybody out of business but themselves, and perhaps pick up what's left of the market on the routes which they consider to be economically justifiable. We are not prepared to have those little guys, either the U.S. carriers at Miami or the Caribbean and Latin American carriers at Miami, put out of business. We are particularly not prepared to have the Russians getting a foothold in that area. All during the last 6 months of last year, the Russian Embassies throughout South America were making tremendously strong pitches to all of those airlines about buying Russian aircraft: Tremendous credits, no payment for 3 years, you pay for it in local currency over the next 10 years, interest rates of 2 percent. And we were making tremendous pitches back to these people saying, "Don't do that. We will work on it. We will help with Congress. We will help with the DOT. We will help with the State Department." It turned out later that Guyana Airways of Guyana bought Tu-154's under those conditions, and Surinam was under tremendous pressure also to do so. But we felt that would have been tremendously counterproductive to U.S. interests to let the Russians get a foothold in that region.

We are all aware of the history of the hush kit industry and the technical delays which have occurred in getting the hush kits into production. I am very pleased, myself, with the way the hush kit industry is developing. I am also pleased that we are beginning to

be reasonable, particularly to the foreign carriers, because the United States is not entitled, under bilateral air agreements, to make unilateral decisions. You cannot unilaterally enact what a foreign carrier will do with it's airplanes; you negotiate.

We now have Comtran/Tracor with certification. I understand that Nacelle Corp. and ADC will be getting certification within the next 60 days, and the excellent AAT hush kit. I was at the Paris air show last week, and Mr. Wallis was there talking with the major European airlines—I understand they will be certificated, almost certainly. The FAA are very, very impressed with the engineering design of their hush kits. I'm very pleased to see they're working with Pratt & Whitney, and they're working with Grumman who I understand did the nacelle for the Chemicorp engine. I understand that McDonnell-Douglas is even talking to AAT, which is a tremendous breakthrough.

The hush kit industry is also tremendously attractive to the big fowarder airlines in the United States, like Emery, UPS, Burlington-Northern. It's very clear now that those big forwarder airlines are going to buy up DC-8 61's and 63's, put hush kits on them, and run them on this overnight small package service across the United States. Very, very successful. It's the big, growing trend in the air freight industry now, this door-to-door overnight package service.

We at Miami are very pleased that we have been doing our own studies which indicate that probably, by the end of this year, most of our 707's and DC-8 62's and 63's will have been hush kitted, and probably by the middle of next year the remainder almost certainly will have been hush kitted. The 55-series freighters, may be hush kitted towards the second half of next year because the 55 series freighter hush kits are going to be delayed. And the whole thing is now fitting very, very nicely into place.

The large U.S. carriers, to a certain extent, are grandstanding. Delta has always felt very strongly, I'm not sure the other airlines have felt quite so strongly. They all changed over from the 707 and DC-8 to the DC-10 and 1011 for quite other reasons than noise, and now they're changing over to the 757 and 767 for other reasons again. If I were a big U.S. airline like United, which has 49 of its aircraft already exempted until 1988, and Eastern which has 58 exempted until 1988, and Republic, which has 95 aircraft exempted until 1988, I would find it very difficult to stand there with a straight face and say, "Oh, we shouldn't ever have any more exemptions for anybody."

I think, had the FAA announced earlier during 1984 that a firm hush kit contract would have been the basis for an exemption, that could have started this whole hush kit industry program 12 months earlier. And in retrospect, that could really have helped develop the whole industry.

We have to also be aware that the big U.S. airlines need the secondhand market. They talk about selling the secondhand aircraft off and people buying them cheaply. Many of our Latin carriers paid market value for those aircraft during the 1970's. The airline industry and the aircraft manufacturers need the secondhand aircraft industry, like we all need the secondhand automobile industry. In particular, in our cargo market, cargo planes are always

converted passenger planes and always will be. We are now converting, in fact, the 727 100-passenger planes at Miami, and shortly we'll start conversion of the 727 200-passenger planes.

Some of the big U.S. airlines have said that any exemptions will betray the FAA's policy, betray the airport neighbors, and generally birds will turn to stone and fall from the skies. This really isn't so. The FAA's policy has been and will continue to be very successful. The continual requirements for improved noise technology on new aircraft have led to aircraft like the 757. I watch the 757 go past my office window every day and I am amazed at how far we've come in the past 10 years.

Granting exemptions which are reasonable, to this date, does not diminish the rule's effectiveness. It simply allows reasonable accommodations and fine tuning of any legislation. This always goes on. The exemptions which are granted will not really change the noise levels of the Nation's airports. The number of 707's and DC-8's which are flying in the United States now at any major airport are very few and far between. We have more than anybody else, and we hardly notice them. One of the factors that is often not brought out is that the FAR-36 and FAR-921 noise regulations are not based on the noise an aircraft makes; they are only based on the noise an aircraft theoretically makes at theoretical gross takeoff weights and theoretical gross landing weights. We have just finished 2,000 noise measurements, and we found that the takeoff noise of the 707's and DC-8's out of Miami is lower on our community than the takeoff noise of the 727-200s, which are compliant. Obviously, the 727's are right up there at the max gross takeoff weight, going to Chicago. The 707's are relatively light, only a 1,000-mile sector.

We are very supportive of the DOT policies, supportive of noise control measures. We inserted into the Hawkins-Chiles legislation the frequency of operation measures: Only carriers that were operating at frequencies of service that they were already maintaining could continue operating. We think that the LAC criteria needs some fine tuning. I'm not at all sure that having signed a contract by March 29, 1985, really is entirely necessary, and I'm not at all sure that the September 1985 certification date is entirely necessary. In particular, AAT does have a very advanced technology and there is some discussion now by the forwarder airlines as to whether AAT can meet stage 3 noise levels with their hush kit. If they can meet stage 3 levels with that hush kit for the DC-8, it's certainly worth waiting for and getting them to do it.

In conclusion, I would like to reiterate that we've all come a long way. I think we're now dealing with the problem realistically. I think your committee and the Department of Transportation are to be commended, and we are very highly supportive of everything reasonable being done. We will continue to work with all our airlines at Miami, get all those airlines to get hush kits, and we'll force them into it as much as we possibly can. Thank you, sir.

Mr. MINETA. Thank you very much, Mr. Reaveley.

Ms. Carbullido, do you wish to go ahead and proceed?

Ms. CARBULLIDO. Thank you, Mr. Chairman. I am appearing before you today to present the statement of the Honorable Ricardo

J. Bordallo, Governor of the Territory of Guam, who is unable to be present today.

The government of Guam urges the subcommittee to adopt policy guidelines for the Federal Aviation Administration which would require consideration of the views of the affected community when applications for exemptions from noise regulations have been submitted. Policy guidelines should be adopted which specifically require the FAA to make findings with regard to the probable economic impact and noise level benefit, if any, to the affected community if noise exemption applications are granted or denied.

The foremost private industry in Guam is tourism, and the overwhelming majority of our tourists, more than 80 percent of the total, come from Japan. The tourism industry in Guam has grown from 6,000 visitors in 1967 to over 350,000 visitors in 1984. Tourism accounts for approximately $210 million in annual retail sales, which constitutes 50 percent of Guam's total retail sales. The average expenditure of each tourist visiting Guam is $600. The tourism industry provides approximately one-third of the total private employment in Guam. Through applicable local taxes, the industry contributed $8.4 million in revenue to the government of Guam.

Over the past several years, charter flight programs have contributed significantly to the development of the tourism industry in Guam. These charter flights are particularly important because they offer relatively low-cost air transportation to large groups of tourists who might not otherwise be able to afford a vacation on Guam, and because they operate directly from provincial cities in Japan which do not receive scheduled service to or from Guam, thereby making Guam more accessible as a vacation destination to potential tourists who live in the provincial areas.

Because of Guam's remote location in the Western Pacific, it is especially vulnerable to disruption of the extremely limited level of air service that it has been receiving. During the past several years since the domestic air transportation system was deregulated, Guam has experienced sharp reductions in the level of direct air service to Honolulu, the gateway for connecting service to the U.S. mainland. Service on the Guam-Honolulu route has often been unpredictable due to abrupt decisions by certain carriers to terminate service for economic reasons, and in one case, revocation by the FAA of a carrier's operating authority due to alleged safety concerns. Consequently, Guam has come to be even more dependent on the availability of service to and from Japan. The only practical way for tourists to reach Guam is by air. Denial of noise exemptions would cause cancellation of flights to Guam and would leave many potential visitors with no way of getting to Guam for their vacations. This would be particularly evident during holiday periods of peak demand when many charter flights operate. Thus, flight service is an essential air transportation link between Guam and its source of tourist income, Japan. To the economy of Guam and to the people of Guam it is a valuable—indeed, essential—air transportation service.

As an example, the recent denial by the FAA of Japan Airlines' petition for noise exemption for charter flights will result in a loss to the people of the Territory of Guam of tourist expenditures in the amount of $900,000, with an accompanying loss of tax revenue

generated by such expenditures. Additionally, there will be a direct loss of revenue in the amount of $215,700 to the Guam Airport Authority, an autonomous government agency charged with the duty to maintain and operate civil aviation facilities on Guam. While these sums may not appear to be significant when compared with revenues generated by the U.S. Government, loss of this revenue to the people and the government of Guam would have a severe effect on the community. At a time when the government of Guam is being urged by the administration to increase revenue to eventually become self-supporting and no longer need Federal funds, it is ironic that enforcement of Federal regulations will undermine economic growth and result in the direct loss of significant revenue to the Territory of Guam without any appreciable benefit to its people.

An additional factor to be considered is that if exemptions from noise regulations are not given to applicants serving Guam, the air carriers will be forced to land their flights, regular or charter, in other destinations in the Western Pacific such as Australia, Fiji, Denpasar, and Kiribati, which are already competing with Guam to attract tourists from Japan. Again, denial of the exemptions would seriously harm Guam's tourist industry and reduce government revenue, while inadvertently benefiting non-U.S. destinations.

The government of Guam has made known to the FAA its strong support of the various applications for noise exemption by carriers serving Guam, including those of South Pacific Island Airways and Japan Airlines. Although the noise rules were adopted for the protection and benefit of localities, and although the government of Guam and the people of Guam are more than willing to dispense with the supposed "benefit" in order to avoid the economic catastrophe that will ensue if the noise exemption applications are not granted, the FAA failed to communicate with the government of Guam and failed to otherwise take into account the views of the community in reaching decisions to deny applications. Most recently, Guam and other isolated island communities submitted answers strongly in support of a petition before the FAA by Japan Airlines for a noise exemption which detailed the total dependence of these remote islands on the limited air service available and the unique circumstances which clearly justify exempting these islands from blind application of the noise rules. In denying the exemption, the FAA failed to comment upon or in any way acknowledge the strong support of the government of Guam, the State of Hawaii, and other island communities and the unique circumstances which were stressed. The FAA has completely refused to even pay lip service to the economic disaster to Guam that will result from such denials.

In sharp contrast, other Federal agencies and Federal programs have taken into account the fact that environmental constraints in Guam are vastly different from those on the U.S. mainland. For example, because of its location as a remote island, Guam has been exempted from Federal air pollution standards which would not have appreciably improved air quality levels but which would have imposed a heavy and unnecessary cost on the people of Guam. Similarly, the unique characteristics of Guam's geography and en-

vironment justify the grant of an exemption from the aircraft noise regulations which may be appropriate on the U.S. mainland, but which are inappropriate, unnecessary, and economically devastating if applied to Guam.

The Guam Airport is used jointly by civilian and military aircraft. The extensive military aircraft operations, which are not subject to the FAA's noise regulations, produce a far more severe noise impact than that caused by the limited number of civilian flights using noncompliant aircraft. In particular, military aircraft regularly fly over populated ares of Guam, and make takeoffs and landings at Andersen Air Force Base and at Agana Naval Air Station, which is the airfield used by all commercial air carriers. It is ridiculous to impose upon the people of Guam the economic hardships resulting from the cancellation of flights which do not presently meet the FAA's noise standards, since the noise impact of those flights is insignificant and unappreciable when compared with the noise produced by military aircraft, to which the people of Guam have become accustomed.

Landings at Guam Airport of military aircraft, both from ships and bases outside of Guam, is frequent. In 1983 and 1984 there were 20,167 and 19,860 incidents of military aircraft activity—landings or takeoffs—respectively. Incidents of military aircraft activity account for more than four times the total number of civil aircraft incidents of all types. At the present time, the government of Guam has received very few complaints from the public about the level of aircraft noise. Those few complaints that have been lodged relate directly to military aircraft landings and testing of military aircraft on the ground. The level of noise at Guam Airport attributable to civilian aircraft which are not in compliance with noise standards is insignificant in comparison to the level of noise generated by military aircraft now using the airport.

In conclusion, considering the severe adverse impact on the economy of Guam which would result from the loss of the vital services of the various airlines and charter flights which do not presently meet the noise standards and the fact that the citizens of Guam will continue to experience much more aircraft noise from military aircraft utilizing the same airport at which these noncompliant flights would land, and for the other considerations referred to above, I wish to strongly emphasize that it is clearly in the public interest that the views of the affected community be considered by the FAA in reaching decisions on noise exemption applications. This committee should give guidance to the FAA so that it will consider the public petitions of Guam and other remote island communities and consider the unique and special circumstances which exist. This committee should give additional guidance to the FAA to the effect that when exemption applications are considered, the size of the air carrier should not be a determinative factor because the number of carriers serving Guam is extremely limited and each carrier provides vital and fundamental air service.

Without the help of this committee, Mr. Chairman, it is clear that the FAA will ignore and disregard the fact that Guam is totally dependent upon air transportation for the survival of its people and economy. At this very moment we are preparing proposed legislation to be submitted to Congress which would exempt Guam

from the application of the FAA noise regulations. However, before this legislation can even be submitted, economic catastrophe will be inflicted on Guam with absolutely no concurrent benefit. I implore this committee to act swiftly in giving the appropriate guidance to the FAA to take into consideration the unique and special circumstances which exist in Guam and other island communities. Guam is unique and it should not be made to suffer unjustly at the hands of regulations which would cause severe economic harm but contribute no benefit.

Thank you, Mr. Chairman and members of the committee, for your kind attention. I would respectfully request that all questions be in writing so that the Governor may respond to them.

Mr. MINETA. Thank you very much.

Ms. Barrett, your statement will be made a part of the record, please go ahead and proceed.

Ms. BARRETT. Thank you, Mr. Chairman.

I'd like to thank you for the opportunity to talk to you today about the DOT-FAA exemption policies for noisy aircraft. I feel a little bit surrounded by people who are taking a position in favor of increased leniency, and I'm going to take the opposite position, although I hope to take it briefly.

I work at Logan Airport, which is the tenth busiest airport in the United States in passengers, and the eighth busiest in operations. As many of you may know who have used Logan, it is located in the heart of Boston, just minutes from the downtown financial district. Our location makes Logan one of the Nation's most convenient airports, but that convenience also makes us one of the Nation's most noise-impacted airports. Logan is surrounded on three sides by densely populated communities. About 100,000 people live within Logan's Ldn 65 contour, and there are three neighborhoods in East Boston and the neighboring town of Winthrop which have an annual noise exposure above 80 Ldn.

To put that into context, recently promulgated FAA standards concerning noise levels state that everything above 65 Ldn is considered to be serious noise, and that areas between 65 and 75 Ldn should have significant sound insulation in any residential communities, and that areas above 75 Ldn are considered to be unfit for dwelling altogether. Some East Boston residents live as close as 1,400 feet from a major jet runway, and roughly 30 houses are located directly within the clear zone of one of our parallel runways.

During the last 9 years—I should just say also, as a parenthetical remark because this comes up in many contexts—the neighbors of Logan Airport were there before the airport. They did not move in and buy houses cheaply and then sue because of noise; they've been there for generations. Boston is an old city; those neighborhoods are mostly 100 years old.

During the last 9 years, our neighbors have worked with us, the airlines, the FAA, and members of our congressional delegation to reduce the noise impacts of Logan. And during that period we have accomplished a great deal, including several "first in the Nation" programs, as we have worked together to accommodate each other's needs.

During the past 9 years, Massport has adopted noise rules and regulations including restrictions on the noisiest aircraft. We have

developed a preferential runway system, the first computer-operated system of this type in the country. We have worked to reduce ground noise. We have changed flight tracks—the first EIR on a flight track that the FAA ever did in this country. We have taken the airlines that violate our noise rules to court, and we've seen them fined. We have successfully soundproofed schools; again, the first publicly-financed soundproofing program in the country. And we are presently carrying out a pilot program to soundproof homes around the airport. The last 9 years in Boston have not been easy, but they have at least been characterized by a good faith effort on all sides, with a commitment to continue to work together to improve our noise abatement programs.

But now, all three programs, which have been the result of joint efforts, are in jeopardy due to an increasing public distrust and doubt over Federal noise abatement policies, as well as the probability of enforcing deadlines presently mandated by law. Today, there is a great deal of cynicism about the Federal Government's real commitment to noise abatement and that cynicism can be traced directly to the way in which the exemption policies have been managed by FAA.

Since you opened hearings on this subject, Mr. Chairman, you've heard much testimony on the damage, both current and future, which the FAA's handling of the exemption issue has caused. This was from testimony which I read from the May 22 hearing and not today. Evidence of this is not only apparent in the reasons put forward by industry leaders from both the airlines and the airports, not to mention the judiciary, but even more dramatic is the concurrence on this issue between such diverse and occasionally antagonistic entities.

I will not reiterate the positions so adequately and fully presented by Delta Airlines and the National Air Carrier Association and by others. Let me simply focus on points where, as an airport proprietor, we feel we have a particular interest.

First of all, the testimony I have read to date accepts the applicability and legitimacy of the five criteria from the ASNA conference committee report as appropriate for the granting of exemptions. This interpretation is unclear to us, whereas the part 91 statutory language is quite clear on the subject of deadlines and exemptions. Indeed, FAA itself took the position that no exemptions for stage 1 four-engine aircraft were justified. Only at the end of 1984, while searching for an explanation for an obvious change of heart, were these five criteria unearthed in a conference report, and then brought forward as mandated by Congress.

What is more, in his testimony before this same committee, Matthew Scocozza, representing the Department of Transportation, makes reference to the same conference committee report as the basis for "blanket exemptions" to two-engine aircraft capable of providing service to small communities. If FAA and DOT wish to rely on congressional intent rather than statutory language, then perhaps the 500-odd exemptions under the small community service provisions ought to be reconsidered in the same light. Please let me explain.

In Boston, more than 13 percent of the total operations were conducted in these exempted two-engine aircraft during 1984. And,

what is more important, the cities they serve—Pittsburgh, Philadelphia, and the Nation's Capital, among others—can hardly be categorized as "small communities." So, if the intent of Congress is really uppermost in the minds of FAA and DOT officials when considering applications for exemption, then these small community service exemptions should have been limited, as their title indicates and as Congress intended, to cities vulnerable to a complete or significant cessation of air service if small aircraft were unavailable.

In total, the small community exemptions, the Miami-Bangor exemptions, and the recent DC-8 and 707 exemptions under discussion have amounted to 600 aircraft nationwide. At Logan, more than 9 percent of the total fleet of all the scheduled air carriers is still in stage 1 aircraft, and this does not count the four-engine charter aircraft, which are the actual subject of this hearing. Thus, the rather cavalier and across-the-board method of granting exemptions by FAA has significantly increased the noise levels at Logan and over the whole Nation over what was originally contemplated under ASNA and FAR part 91.

The reaction from communities around Logan has been predictable. Pressure for increasingly stringent noise rules at the local level has grown. No longer will the public accept Federal schedules under part 91 as a given; on the contrary, they are not only angry about the four-engine aircraft, but are already accepting as gospel that the 1988 deadline for two-engine aircraft will also fall.

Our board of directors has shown an increasing interest in rewriting our noise rules and regulations to protect against any weakening of Federal standards. Indeed, they have quizzed me about why our staff has not already recommended a local rule to protect against erosion of part 91 as the New York Port Authority had the foresight to do. And, as I might add, as Minneapolis-St. Paul has done subsequently, and I believe LAX has done the same thing.

As a result, the staff at Massport has been engaged very heavily in reassessing our current noise rules and regulations and is considering possibilities for new approaches. Among the proposals under serious scrutiny is a regulation to protect Boston from future operations in stage 1 noncompliant aircraft.

An airport situated as close to residences as we are simply has no choice but to protect its neighbors from the highest levels of aircraft noise. To give an example, a stage 1 707 aircraft at the part 36 measuring points emits 118.5 decibels on approach, 113 decibels on takeoff, and 102.1 decibels at the sideline.

Now, I should say just in reference to the conversation that you had previously on the subject of these retrofitted aircraft, I also have for that same model 707-300 the retrofitted noise levels, which are 105.5 on takeoff, 99.5 on sideline, 105.9 on approach. On approach, the difference between unretrofitted and retrofitted is 12.6 decibels; on takeoff it's 7.5 decibels. I assure you that if you stood at the end of my runway you would hear the difference. Ten decibels is half the noise; anybody can hear half the noise. Not only that, but I should put in as an aside that the 105.5 and the 105.9 are no bargain. They are very noisy aircraft still, even retrofitted, and that's something that ought to be taken into account. These

are not quiet airplanes. We are not talking about things like the reengined DC-8 which meets stage 3 noise levels and which is a genuinely quiet airplane.

These are excruciating noise levels by any standard, but they become truly unbearable when residents know that they are experiencing that pain only because a commitment of many years' duration has been reneged upon.

In conclusion, I would like to leave you with some recommendations for action.

First, if Congress did not intend blanket exemptions for stage 1 two-engine aircraft or for stage 1 four-engine aircraft, then this should be made clear to FAA and existing exemptions should be rescinded.

Second, if Congress did mean that the five criteria listed by FAA as grounds for exemption for four-engine aircraft be used for that purpose, then those criteria must be consistently and seriously applied. Simply stated, all five must apply in each situation, and such expressions as "valuable service" must be defined so that all services do not indiscriminately meet this standard.

Finally, support must be given to local airport operators who, due to the nature of their geographical situation, must take steps to protect their neighbors from unreasonable levels of aircraft noise. If such steps are not taken, serious dissension inevitably occurs, frequently resulting in litigation and in the inhibition of the aviation industry as a whole. A long-sighted proaviation stand must include a thoughtful environmental and community component.

Thank you.

Mr. MINETA. Thank you very much.

Mr. Ziegelaar?

Mr. ZIEGELAAR. Thank you very much, Mr. Chairman and members of the committee. I appreciate the opportunity to present the views of Bangor International Airport with regard to the FAA's policies on exemptions from the noise regulations and with regard to how those policies affect Bangor.

The standards enunciated in the LAC order—Lineas Aereas Del-Caribe—constitute a major improvement over the FAA's previous standards, in our view. Under no circumstances would we like to see the committee take any action to force the FAA to revert to its previous policies. However, we believe that even the LAC standards do not go far enough in effectuating congressional intent as recently manifested by section 124 of Public Law 98-473. In enacting that legislation in October of 1984, Congress clearly stated that the public interest would best be served by the grant of a temporary exemption for Bangor operations. Undoubtedly, this congressional action was based on the determination that any short-term environmental effects stemming from the operation of noncompliant aircraft at Bangor would be outweighed by the economic havoc resulting from the loss of those flights. This conclusion is perfectly understandable since the total absence of any noise-related environmental problem makes the only purpose of the Aviation Safety and Noise Abatement Act of 1979—to reduce excessive airport noise—inapplicable to Bangor.

There are several basic facts to keep in mind when considering the situation at Bangor International Airport. First, Bangor has no noise problem. In 1984, the airport received less than five noise complaints. None of these involved 707 or DC-8 operations—which at that time, incidentally, constituted 50 percent of our international traffic. I should also add that most complaints do relate to military flights and commuter engine runups, and further that the military aircraft based at Bangor—and there are nine such aircraft—are the military versions of the 707, which account for many, many more operations than the civil 707s and DC-8's landing at Bangor.

The absence of a noise problem at Bangor is dramatized by the fact that all members of the Maine congressional delegation, who in general, I am proud to say, are very sensitive to environmental concerns, joined in a request to the FAA to exempt noncompliant operations at Bangor from FAR 91.303. In this context, we respectfully submit that the views of the airport proprietor and the community sentiment, as expressed by Maine's elected representatives, should be accorded great weight in determining how FAR 91.303 should be applied to Bangor.

The second basic fact to remember is that Bangor, which although owned and operated by the city of Bangor, receives no subsidy from that city and cannot afford to lose any revenue. The financial losses that would result from termination of noncompliant operations could very well result in the airport closing its doors. Bangor International Airport has developed into one of the major economic forces in the city of Bangor and in central Maine, largely because its location makes it an ideal refueling stop for transatlantic traffic. In this context, a restrictive noise exemption policy would be devastating to Bangor. Virtually all of the airport's noncompliant operations consist of refueling operations which do not involve embarkation or disembarkation of passengers or cargo. In 1984, approximately half of all international refueling operations at Bangor were operated with noncompliant aircraft. Since Bangor's refueling operations constitute a service and not a destination, they are highly vulnerable to competition from neighboring foreign airports providing similar services.

Bangor's major competitor in this respect is nearby Gander Airport in Newfoundland, Canada. Gander is located less than 1 hour from Bangor and, like Bangor, is situated on the so-called great circle route used by most transatlantic traffic. Gander has two built-in advantages over Bangor. First, it is heavily subsidized by the Canadian Government. For example, Gander is exempt from certain fuel taxes applied to other Canadian airports. In addition, landing fees at Gander are lower than those uniformly applied at other Canadian airports. The reason for this special treatment at Gander is obvious: to enable the airport to better compete against Bangor for refueling business, and thereby protect the local Newfoundland economy.

Gander's second advantage is that it is not subject to U.S. noise regulation. Thus, carriers can serve Gander without first obtaining a specific exemption from FAR 91.303. In view of the similarity of the services provided by Gander and Bangor, and the geographic proximity of the two airports, even the marginal cost of applying

for FAA exemption authority to serve Bangor could prove decisive for many carriers.

The loss of Bangor's refueling revenue would affect more than just the airport. As you probably know, Maine is a small and relatively poor State, in the financial sense. In recent years it has witnessed a serious decline of its textile and shoe industries, among others, due to foreign competition. Maine's fishing industry is also subject to stiff Canadian competition. The additional loss of Bangor's refueling revenue and the potential loss of the airport itself would prove disastrous to Bangor and the State of Maine.

As previously noted, Congress passed the Hawkins-Chiles amendment in October 1984. The sole purpose of that legislation was to grant relief to two airports, one of which was Bangor. Furthermore, as expressly stated by its sponsors, the amendment was necessary only because of the failure of the Department of Transportation to be reasonable in applying the standards for exemption under ASNA. As stated by one of the sponsors, Florida Senator Paula Hawkins, the effect of the amendment was to legislatively determine "that carriers conducting international operations at Miami and Bangor, and which operate aircraft that can be brought into compliance by hush kits currently under development, meet the exemption requirements of the ASNA with respect to 'valuable air service,' 'financial havoc' and delayed or unavailability of necessary technology for compliance."

The Senator further elaborated that—

> In reference to section (b) of the amendment, the discretionary role of the Department of Transportation in granting exemptions at Miami and Bangor International Airport is limited to determinations as to whether equipment is currently under development which can reasonably be expected to achieve compliance for a particular model of aircraft, whether applicants have contracted with specific suppliers whose products are likely to meet this standard, and whether applicants placed a sufficient deposit with the supplier to ensure that the applicant in fact intends to fulfill his contract and acquire the equipment specified in the contract.

In other words, passage of the Hawkins-Chiles amendment was intended to direct the FAA to grant Bangor exemptions to all carriers which had signed hush kit contracts and which had operated to Bangor or via Bangor in the past.

However, despite the clear intent of Congress, the Hawkins-Chiles amendment did not solve Bangor's problems. To the contrary, only one carrier obtained an exemption for Bangor pursuant to this amendment. In large part, we believe the amendment's failure to help Bangor was attributable to the fact that refueling at Gander is such a ready substitute for refueling at Bangor that carriers saw no reason to justify even the limited expense necessary to apply to the FAA for an exemption.

Of course, carriers serving Bangor also have the alternative of applying for exemptions pursuant to the general ASNA provisions. Unfortunately, the pre-LAC ASNA exemptions were inadequate for Bangor's needs. The FAA's restrictive pre-LAC policies effectively denied relief to carriers which were making every possible effort to comply with the noise regulations.

The FAA's pre-LAC frequency restrictions were especially damaging. Those restrictions were imposed on a nationwide basis so that a carrier which was granted, for example, an exemption for

100 operations for 1985 was at liberty to allocate those frequencies among all of the cities for which it had been exempted. And since carriers could obtain virtually identical services at Gander as at Bangor, they were reluctant to use valuable frequencies for a non-traffic stop at a refueling point.

The net result of all this was that despite the clear intent of Congress, neither the Hawkins-Chiles exemptions nor exemptions under ASNA were sufficient to give Bangor the relief that it needed. As a direct result of the FAA's restrictive policies during the period January through April 1985, Bangor lost approximately 20 refueling operations per month, or approximately 25 percent of traffic operating during the comparable 1984 period.

In actuality, Bangor's loss was greater than what I have just indicated. In addition to lost revenue, we were forced to incur considerable expense to bring our plight to the FAA's attention in an attempt to obtain the relief we so desperately want.

The LAC order is definitely a step in the right direction from our perspective as it would enable all exempted carriers to conduct refueling operations at Bangor. Of course, it is still too early to tell whether a sufficient number of our customers will be able to meet the LAC standards and qualify for the exemption which is a prerequisite for the continuation of refueling operations. However, our preliminary analysis suggests that enough of our customers will qualify to enable us to continue to function.

Nonetheless, the LAC standards are far from being the solution to Bangor's problems. In view of the absence of a noise problem at Bangor, and considering the congressional intent to help Bangor as expressed in the Hawkins-Chiles amendment, we view the LAC standards as being too restrictive to the extent that they bar noncompliant operations at Bangor to even one carrier which has demonstrated good faith by contracting for a hush kit. The purpose of ASNA was to require operators of noncompliant equipment to either obtain new compliant equipment or to retrofit existing equipment to meet FAR 36 standards. As you know, many carriers cannot afford new equipment. The only alternative for these carriers is to retrofit. However, up until very recently, no hush kits were commercially available, and even now there is no way to obtain such kits without several months' delay. It makes no sense to deny exemptions at Bangor, or at any other airport, to a carrier which has done everything within its power to comply with the noise regulations, but which has not been able to obtain a hush kit because of production delays.

In this context, we respectfully refer you once again to Senator Hawkins' statements to the effect that passage of the Hawkins-Chiles amendment demonstrated the congressional determination that carriers conducting international operations at Bangor with aircraft that can be brought into compliance by hush kits currently under development, meet the ASNA exemption requirements with respect to "valuable air service," "financial havoc," and "unavailability of compliance technology."

Furthermore, we are extremely concerned over pressure being put on the Department of Transportation to terminate exemptions after December 31, 1985. There would be no point to interrupting a carrier's operations because, due to no fault of the carrier, the

hush kit for which it has contracted has not been manufactured. We respectfully submit that all exemptions should extend until the actual hush kit can be installed.

Finally, although we recognize that the Hawkins-Chiles amendment limited the number of 1985 frequencies to those operated during 1984, we respectfully submit that this limitation is misdirected with respect to Bangor, and that there is no need for the FAA to adhere to it in granting Bangor refueling exemptions pursuant to ASNA. The stated purpose of the Hawkins-Chiles frequency limitation was to prevent Bangor from attracting traffic away from competitive U.S. airports. However, the actual result will be to penalize Bangor in its competition with Gander, with which it competes more directly than with other U.S. airports. Accordingly, we submit that imposition of any frequency limitation is unnecessary to protect other U.S. airports and that the only result of a refueling operation limitation is to handicap Bangor in its competition.

In conclusion, I would like to reiterate that we believe that congressional intent would best be effectuated by allowing all carriers that have signed hush kit contracts to continue to operate at Bangor pending installation of those hush kits. Furthermore, although the standards enunciated in the LAC order do not go far enough, in our view, they are a major improvement over previous FAA policies. We therefore earnestly urge you to refrain from taking any action which would force the FAA to revert to its previous position which was, in our view, restrictive. We believe that we can survive under the LAC standards. We know we cannot survive the continued loss of revenue which would result from reimposition of the pre-LAC standards. Rather than entertain any notions of tightening the LAC standards, I urge you to encourage the FAA to continue to improve on the LAC standards by removing frequency limitations, by granting Bangor refueling exemptions to all carriers which have signed hush kit contracts, and by allowing such exemptions to continue pending hush kit installation.

Again, thank you very much for giving me this opportunity.

Mr. MINETA. Mr. Reaveley and Mr. Ziegelaar, I find it surprising that your statements deal with the standards which should govern exemptions for service to airports other than Miami and Bangor. When the Hawkins-Chiles amendment was under consideration, Miami and Bangor argued very strongly that your own two airports should be treated specially, and that Congress should legislate special criteria for Miami and Bangor. Your fellow airport operators disagreed with you, and both the Airport Operators Council International and the American Association of Airport Executives have worked with us to try to prevent the liberal criteria for exemptions. In other words, although the airport authorities at Miami and Bangor appear to want service with noncomplying aircraft, operators elsewhere in the country do not.

Now, this being the case, why are you arguing for more liberal criteria outside of your own two airports since Congress accepted your argument that the wishes of your airports for noncomplying aircraft should be satisfied? Isn't it only fair to also respect the wishes of other airports, who do not want noncomplying aircraft?

Mr. REAVELEY. Absolutely. I hope that my comments were not construed as having any application to any airport other than Miami International. My comments referred strictly to airlines and aircraft at Miami International. We particularly feel, though, that, for example, under Hawkins-Chiles, if a carrier has a contract for a hush kit and that hush kit supplier is not able to supply by the end of this year, this whole question does he need to make another application must be dealt with. Is there an automatic extension until the hush kit is ready? And we'd just like to draw your attention to the fact that, really, there should be a little bit of common sense involved toward the end of the year. We intend to continue pressuring all our airlines at MIA to ensure that they are compliant with FAA——

Mr. MINETA. Let me ask, then, on page 13 where you're talking about the March 29 date, are you saying that this proposal ought to be limited to Miami in terms of looking at that March 29 date?

Mr. REAVELEY. Correct. It may well be, for example, that an airline has sold one airplane and replaced it with another of a similar model, and now would like to get a hush kit contract for this new model of the same replacement type. That date has now made it impossible to do so. I think it's a question of intent, that we'd just like to fine tune.

Mr. MINETA. Mr. Ziegelaar?

Mr. ZIEGELAAR. Congressman Mineta, maybe I should give you a little bit of history on the subject of Bangor International. As you may know, Bangor was Dow Air Force Base until 1968 which, to the great surprise of the citizens of Bangor, was closed in 1968, threatening the entire economy. The city then took it upon itself to market the airport as a refueling stop for transatlantic carriers. That was done with a great deal of effort. The effort was successful against predictions by many people in the industry. One of the reasons we were successful, and we owe some allegiance, perhaps, to some of the smaller carriers in the business, is that it was the charter industry that really put us on the map: low-cost operators who were operating in an efficient manner with high-density seating, which have allowed many Americans the opportunity to visit Europe particularly over the past 10 or 15 years. So, from that point of view, we feel we owe some allegiance to the industry that put us on the map to begin with.

Since that time we have also developed in other areas and service also major carriers and scheduled carriers as well. However, we felt that it was unfair to require our clientele, to the extent that 50 percent were operating noncompliant aircraft, to refrain from operating without hush kits being available to solve their problem. Beyond that, the only thing we asked the FAA to do was to grant Bangor refueling stops to any carrier which had already acquired exemptions for other cities. By the FAA not doing so, it essentially forced our customers operating, say, routes between Houston and Frankfurt, into Canada to make their refueling stop.

Mr. MINETA. Ms. Barrett, Mr. Reaveley in his testimony also says that the "four-engine jets in question are not a significant part of our Nation's noise problem." Where do you think the four-engine jets fit in the Nation's noise problems?

Ms. BARRETT. There's no question that the four-engine jets, the DC-8's and 707's, untreated, are the noisiest airplanes in the fleet. From our point of view, every operation in one of those planes, which really is a significant impact as a single event on anybody underneath, is an additional and an unnecessary burden to people who are burdened already by significant numbers of operations which are necessary, but quieter. The public has understood that those airplanes would go away in 1985, and now they've found that they haven't gone away. And so, from a public perception point of view, these become not only the noisiest events that they hear, but they also become a symbol of what didn't get delivered and what didn't happen on time, as they were promised.

Mr. MINETA. What's the total number of operations, takeoffs and landings, there at Logan daily?

Ms. BARRETT. Well, we're increasing—I don't know what it will be this year. It's about 1,000 a day, roughly.

Mr. MINETA. And you have a curfew or restricted period of operation?

Ms. BARRETT. We do. We have—not a curfew—we have a restricted period at night where stage 1 operations are illegal, from 9:30 p.m. to 7 a.m. for departures and from 10:30 p.m. to 7 a.m. for arrivals.

Mr. MINETA. Are you still towing airplanes?

Ms. BARRETT. We never towed airplanes.

Mr. MINETA. Never did?

Ms. BARRETT. No. We had a rule about it.

Mr. MINETA. I thought they were towing away from the jetway——

Ms. BARRETT. Well, I should be more specific. We had a rule that from certain parts of the airport there was required towing. It was never enforced because our local legislature put in the prohibition on the enactment of that rule. We do require towing from hangars of aircraft which don't have passengers in them. We have no towing of aircraft with passengers.

Mr. MINETA. Mr. Ziegelaar, you appear to suggest that FAA should ignore the Hawkins-Chiles provisions which limit the authorized level of service in Miami and Bangor to the frequencies operated during 1984. You suggest that ASNA exemptions should be granted to permit unlimited refueling stops at Bangor.

Since Congress passed specific legislation establishing clearly defined rules for service at Bangor, shouldn't the rules in that legislation be respected?

Mr. ZIEGELAAR. I think there is a misunderstanding, Congressman Mineta, about the applicability of the word "frequency" to Bangor. We certainly support frequency in the legislation as such. The only problem with Bangor is that carriers will not use a stop at Bangor when they can effectively use that frequency for a revenue landing somewhere else. They do not take passengers in or out at Bangor. It is simply a technical stop, and that stop can easily be accomplished in Gander. So the fact of the matter is that the carrier can actually increase its operations in the United States by using its Bangor frequencies elsewhere. That was our problem with that particular terminology.

Mr. MINETA. I'm wondering also, wouldn't those flights where we have refueling at Bangor be serving other U.S. cities? And if that were the case, would we be loosening the standards to those other cities if we were loosening them for Bangor?

Mr. ZIEGELAAR. Well, we originally suggested to FAA not to look at Bangor frequency at all, not to count previous frequency and not to count current frequency. That would effectively keep the airlines with the established frequency for revenue operations out of other U.S. airports and would leave the question of the technical stop out of the picture altogether, so I would not see how that would increase operations elsewhere in this country if that were done.

Mr. MINETA. Ms. Carbullido, as I recall from your testimony you mentioned that Japan Airlines has applied for an exemption. Do you know of any other airlines that might have applied for an exemption?

Ms. CARBULLIDO. Yes, Mr. Chairman, South Pacific Island Airways, SPIA. Both of them have been denied.

Mr. MINETA. All right. Thank you.

Mr. Hammerschmidt.

Mr. HAMMERSCHMIDT. Mr. Ziegelaar and Ms. Barrett and Mr. Reaveley and Ms. Carbullido, we thank you for your testimony, which was rather comprehensive, and for your patience. I have no questions.

Mr. MINETA. Well, there being no further questions, then—yes, Mr. Reaveley?

Mr. REAVELEY. With your permission, Mr. Mineta, may I make a little observation? Having listened to the testimony of my colleagues here from other airports, it becomes apparent that across our huge Nation we have a very wide range of airports, and that perhaps some fine tuning, I don't know how; perhaps under your guidance some fine tuning under a local option-type rule may be applicable. You've very clearly got Boston, Kennedy, Minneapolis-St. Paul, and Los Angeles hemmed in by housing, with very severe problems. They're trying to work out their problems with informal curfews, very much like LaGuardia and Washington National have done. On the other side you've got airports like Bangor, Stewart, and Miami where, because of fortuitous placement of the airport or the type of airport, you haven't got the same problems. And then, perhaps in the middle, you've got the general range of airports. It may be that some local option criteria can be written in. I don't know how, but some local option can be granted to airports, A, to put curfews in as they have to do and as Washington National and as LaGuardia have informally done, and B, to allow us to operate as we wish to operate, under some reasonable limits as we have defined with our airlines. Thank you.

Mr. HAMMERSCHMIDT. Mr. Chairman, I was going to forego questions because I have a 1 o'clock meeting that I'm late to, but I had a question like this, and while it really wouldn't apply to Ms. Barrett, but I might have the others respond.

The question was this, and it gets to the point you were making. You all, except Ms. Barrett, represent localities where aircraft noise is not a significant problem. Yet your communities have been very definitely affected by the noise abatement deadline. Assuming

it could be done, would you favor allowing the affected communities to decide for themselves whether noncompliant operations should be permitted? So now, let me address that question to Mr. Ziegelaar and Ms. Carbullido, if she feels like she could answer.

Mr. ZIEGELAAR. Well, I have to admit that I'm somewhat divided there. I'm all in favor of noise control, and I think that reasonable Federal limits ought to be set. I just think that in this particular case the issue wasn't thought through completely. The issue of the hush kits wasn't thought through, in particular. So from my point of view, and I think I can represent the airport management, we don't object to a deadline on the installation of hush kits. We just think it ought to be reasonable and not create havoc among the airline industry.

Mr. HAMMERSCHMIDT. Ms. Carbullido, you may, if you wish, have your Governor respond in writing for the record, or you may wish to respond at this time.

Ms. CARBULLIDO. I would like the Governor to submit in writing, but I might say that because of Guam's unique circumstances geographically, that we would be—I would assume that we would be in support of some type of exemption because of our unique circumstances.

[The following was received from the Honorable Ricardo J. Bordallo, Governor of Guam:]

SUPPLEMENTAL STATEMENT OF HON. RICARDO J. BORDALLO, GOVERNOR OF GUAM

Mr. Chairman and members of the committee, in response to Congressman Hammerschmidt's question whether Guam would favor allowing the affected communities to decide for themselves whether noncompliant operations should be permitted, I wholeheartedly support the proposition. Because of the extremely unique circumstances facing Guam and other isolated island communities it is absolutely necessary that these communities be allowed to decide for themselves whether they should opt for strict application of the noise regulations or choose to allow noncompliant aircraft because prohibiting them would have a severely detrimental impact on the community.

Expeditious action by Congress to allow such local discretion to a very small number of communities is necessary to prevent the economic havoc that has already begun to occur in Guam because of the denial of noise exemptions. As I am sure this Committee is aware, South Pacific Island Airways most recently filed bankruptcy proceedings which were, in major part, caused by the denial of a noise exemption. Similarly, Japan Air Lines will be required to cancel hundreds of charter flights to Guam because of a denial of its noise exemption application.

The Territory of Guam and its people should not be made to suffer the dire consequences that will arise from the strict application of the noise rules when absolutely no appreciable benefit to Guam can be realized.

Thank you Mr. Chairman and members for the Committee for the opportunity to testify on these matters.

RICHARD J. BORDALLO,
Governor of Guam.

Mr. HAMMERSCHMIDT. Let me ask you further. When Bangor and Miami were asking for their exemptions, did Guam think about entering into that same request at that time? I wonder why they didn't make that request?

Ms. CARBULLIDO. No, we didn't, sir. I believe that we just were not aware of it.

Mr. HAMMERSCHMIDT. Thank you very much, Mr. Chairman.

Mr. MINETA. Mr. Reaveley, I think part of the problem is the fact that what you're suggesting is where we were at prior to the passage of the law in 1980. I know from my own experience as the

mayor of a city, trying to run an airport that's in a downtown location, very similar to the Logan situation, there's really only one way that an airport becomes a good neighbor, and that is by having a uniform national policy. When you start to have local operating rules on times of operation and with the 3-hour change of time that we have in this country, it really makes it difficult to have these operations where people are taking off and landing at opposite ends of the country without some kind of uniform national policy. After all the years that this subject has been brewing, it was finally decided in 1980 to have some uniformity. And I think that the Congress would today feel that that ought not to be changed, given the fact that we had experienced a local option before.

Mr. REAVELEY. I would agree with you, sir. If we were to go to nationwide local option immediately, I don't know quite what the airline industry would do. Certainly, the OAG would become a very difficult document to produce each month.

I think what we're really looking for here is just a fine tuning local option on a spangle that says, "the application of FAR 91 to international operations," perhaps for just three major airports—four, if you count Stewart— "the application of FAR 91 to international operations only," to enable the carriers who are using those airports with stage 1 aircraft to go on doing so until such reasonable time as they can be retrofitted rather than some arbitrary cutoff date. And, in fact, all our carriers have got contracts and we intend that they will live by them. It's just a question of fine tuning. And I think we would also say that I don't think we really have a national policy right now: LaGuardia, for all practical purposes, although the curfew is voluntary, you cannot go to LaGuardia at 2 in the morning; Washington National does not open every night now. They are trying to quiet themselves down at night now, and MSP does.

Mr. MINETA. That's right. I think the Port Authority of New York and New Jersey has said that, regardless of what the FAA does, this is how we're going to treat people coming into our airports.

Mr. REAVELEY. I think I can see it in the 1990's, cities like Minneapolis-St. Paul, saying, "From now on at nights, stage 3 aircraft only." And I think many people in Minneapolis and St. Paul would say that was a reasonable statement to make.

Mr. MINETA. Well, thank you very much, everyone, for your help and testimony here at this subcommittee.

The subcommittee stands adjourned.

[Whereupon, at 1:39 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

[The prepared statements of Mr. Judy and Ms. Barrett follow:]

STATEMENT OF RICHARD H. JUDY, DIRECTOR, AND, PETER REAVELEY, CHIEF, AVIATION DEVELOPMENT, MIAMI INTERNATIONAL AIRPORT

Mr. Chairman and Members of the Committee, it is a distinct honor and pleasure to appear before you today to discuss a matter which is of great importance to South Florida and Miami International Airport.

As an initial matter, I would like to commend the DOT on the standards promulgated in the Lineas Aereas del Caribe ("LAC") order. Although we still have some reservations about those standards, they will facilitate compliance by smaller carriers, and represent a major improvement over previous FAA policies.

Last October, we in Miami faced a serious crisis as a result of the unreasonably restrictive policy then held by the FAA. Miami International Airport does not have a major noise problem; extensive, state-of-the-art studies show that elimination of all Stage 1 operations at our airport would make a difference of only 0.3 percent in the noise-impacted area. Nevertheless, the impending January 1, 1985 ban on older technology "Stage 1" aircraft seriously threatened the economy of the Miami area. And it also seriously threatened the economics of a great many Latin American and Caribbean nations very dependent on trade with Miami.

Miami would have been particularly hard hit by a rigid enforcement policy. During 1984, approximately 50 carriers served Miami with Stage 1 aircraft, and approximately 30 of these would have been completely shut out of our gateway. Yet fifty percent of Miami's international cargo, worth over $1.4 billion, is carried on the Stage 1 aircraft which were about to be banned. The annual import and export of over 108,000 tons of perishable commodities, including fish and shellfish, cut flowers (one million flowers a day), thousands of head of livestock, and tropical fruits and vegetables, would have been virtually halted.

The effect on the economy of the entire South Florida region would have been extremely serious. The aircraft and trade that flow through Miami International Airport account for 72,000 jobs in South Florida. The livelihoods of large numbers of aircraft maintenance, parts supply, and other aviation support businesses would have been seriously affected, not to mention freight forwarders, customs brokers, and export-import companies.

The effect on many small Latin and Caribbean nations would have been even more serious. Twenty-four cities throughout the region would have been left without freighter service. These include Barbados; San Jose, Costa Rica; Quito, Ecuador; and Santiago, Chile. The U.S. is the principal trading partner of most of these nations, and Miami is the principal hub of this trade. Considering the grave economic crises these nations have been suffering, this blow to commerce could hardly have been more poorly timed.

In spite of our substantial documentation on these points, the FAA held to a rigid and unreasonable policy, which threatened a substantial economic and foreign policy crisis. As of October 1, 1984, out of 96 petitions for exemption, the FAA had granted none and denied nearly half.

This unfair and unnecessary situation attracted the attention of Senators Hawkins and Chiles of Florida, and the entire South Florida Congressional delegation. Backed by the governing bodies of every major political subdivision in Miami and every major Chamber of Commerce in the area, they sought legislative relief.

In October 1984, Congress mandated relief to Miami International Airport and also to Bangor, Maine. This legislative action recognized the need to provide a "bridge" to keep Stage 1 aircraft flying until hush-kits became commercially available. As the measure's Co-sponsor, Senator Paula Hawkins, stated: "It is only the totally unreasonable failure of the Federal Aviation Administration to interpret the law in any rational fashion" which necessitated the action.

In the meantime, as the worldwide hush-kit industry began to develop (and, by the way, hush-kits are a worldwide market, based upon the January 1, 1988 date), the hush-kit manufacturers began to issue detailed technical and financial data to the airlines (starting at a major seminar which we held in Miami). As this data becomes available and as FAA certification approached, an increasing number of carriers began signing contracts for these hush-kits. Accordingly, DOT decided to adopt a more reasonable policy. Unfortunately, given the late hour of this shift, and the agency's failure to forthrightly explain its change in position, the FAA left a trail of inconsistent decisions which were subsequently overturned by the U.S. Court of Appeals. The Court granted stays of the noise rule and directed the affected carriers to reapply to the FAA for relief.

The DOT's response to this situation, the exemption standards set forth in the LAC order, represent, we believe, a good faith effort to deal rationally with a difficult situation. They demonstrate a substantial movement towards recognition of the unique problems faced by smaller carriers who depend on Stage 1 aircraft, and who have no alternative for compliance with the noise rule other than to install hush-kits on their existing aircraft.

Many of the large U.S. carriers apparently would have DOT return to a policy of interpreting the five criteria so restrictively as to result in no, or extremely few exemptions. They would have DOT shut down many small foreign carriers, many of whom have operated for years and provide critically important service to their countries, all of which are politically friendly to the U.S. in an area of the world of great concern to us all. They urge DOT, at the very least, to terminate exemptions on December 31, 1985, including those at Miami, so as to ground carriers who,

through no fault of their own, will not have their hush kits installed until after the first of next year. Presumably these giants of the U.S. airline industry would then have their pick of whatever markets were big enough or financially worth enough to interest them. Yet these restrictive approaches have been recognized as unreasonable in Congress and the Courts, and were explicitly rejected by the Court of Appeals in the lead Airmark case. The LAC order is to be commended in that it too rejects this repudiated approach and leans toward a simple, clean and sensible good faith interpretation of the five standards of the Conference Report.

Indeed, DOT had no realistic choice but to abandon its previous intractable stance and adopt standards at least as reasonable as those in the LAC order. Based on early FAA estimates, it was originally believed that hush-kits for Stage 1 aircraft would be approved, manufactured, and installed in advance of the 1985 deadline. Douglas never developed a hush-kit program. Then Boeing dropped its hush-kit program in 1978. Smaller entrepreneurs began hush-kit development, to meet the worldwide 1988 market, but it was still expected that some of these devices would be certificated during 1984, and that a substantial number of aircraft could be retrofitted by the January 1, 1985 deadline. As the complex development, testing, and certification procedures ran into additional delays, these certification dates have been postponed several times. No hush-kits were ever certificated in 1984. As of today's date, one manufacturer, Comtran/Tracor, has received FAA approval for its B-707 hush-kit and has begun commercial manufacture. I understand that the Nacelle Corporation and ADC are expected to be certificated for their DC8-62/63 hush-kits this summer.

This delay in certification poses a serious problem for Miami: many of our DC-8 and B-707 operators will be in compliance on December 31, 1985, but many will still be awaiting installation of the hush-kits for which they have contracted. The Hawkins-Chiles Amendment empowers the DOT to extend the exemption "if the Secretary determines that equipment to ensure compliance * * * which has been certified by the Department for that purpose will not be available to the holder by that date * * *." Carriers who oppose all exemptions and would prefer to see the hush-kit effort scuttled will surely put intense pressure on DOT not to make any extensions. This, however, would clearly contravene the intent of Congress.

When Congress imposed an initial expiration date of December 31, 1985 on all Hawkins-Chiles Amendment exemptions, it did so in the belief that most, if not all, contracting carriers would by then be in compliance. DOT and FAA had informally represented that hush-kit suppliers for DC-8s and B-707s would be certificated by December 1984 or January or February 1985, and begin production very shortly thereafter. It thus appeared that a December 31, 1985 expiration date would not cause problems for most carriers. There was nothing magic about this date; it simply seemed reasonable under the circumstances. Congress never intended for carriers to be shut down a few months before they were able to come into compliance. It is the FAA, not the carriers, that determines when suppliers will be certificated. Thus the FAA should exercise reasonableness in light of the delays that will make it impossible for some carriers to be compliant by the end of the year.

The hush-kit manufacturers are all working hard on their projects—they are all relatively small companies, with significant cash flow problems, but they are doing a good job with technical input from FAA's own experts. Both the manufacturers and FAA are being very careful on design, testing and flight analysis, before beginning full production. It would be counter-productive to require a carrier to terminate operations, perhaps permanently, pending installation of hush-kits when it has done all it can do to come into compliance, and is simply waiting for delivery of the needed technology. We urge DOT to be reasonable under these circumstances.

Contrary to what some large U.S. carriers would have you believe, these delays in hush-kit development were not the fault of the smaller carriers, which have been left in a limbo of uncertainty by continued delays in hush-kit development. Rather, it was the previous loss of interest by the major U.S. carriers which doomed timely development of hush-kit technology. Development of aviation technology has always depended on the creation by large U.S. carriers of a viable market for aircraft or equipment. However, the large domestic carriers never demonstrated any intention to retrofit their four-engine B-707 or DC-8 aircraft with hush-kits. Instead they opted, for reasons having nothing to do with noise compliance, to equip their fleets with more efficient new generation aircraft, such as the B-747, DC-10 and L-1011. For the same economic reasons, they are now replacing their DC-10s and L-1011s with A-300s, B-757s and B-767s. In this connection, dramatic increases in jet fuel prices in the 1970's, the tax breaks available to U.S. airlines for purchasing new aircraft, changes in domestic passenger demands and the exemption of over 400 of

the U.S. airlines' twin-engine jets until the 1988 ICAO date collectively killed any interest by the major U.S. airlines in retrofitting their four-engine jets.

Although the FAA funded some of the early developments in hush-kit technology in the early 1970s, when hush kits were still considered a viable alternative for the major carriers, it has failed to take an active role in the recent attempts by small companies to develop this technology. Thus, newly-formed companies have been left to build and market wholly new devices without the interest or support of the major carriers or the government.

Another impediment to timely development was the FAA's failure to previously announce guidelines for exemptions. Had the FAA said early in 1984—instead of waiting until December 28—that a firm hush-kit contract would constitute the required good faith it would have encouraged carriers to take the risk to sign up, and would thereby have aided in developing the industry.

The Congressional decision to equate good faith with a firm hush-kit contract, the position subsequently adopted by the FAA, was entirely reasonable given the circumstances of the smaller carriers. The effect of this policy was to allow these small carriers to comply with the noise rules in the only way reasonable for them. It breathed new life into the hush-kit industry. Had the FAA shut down carriers who were expecting to purchase hush-kits, they never would have been able to pay for this equipment, and commercial development of the hush-kit industry would have been doomed. While this result might have benefitted those large U.S. carriers always pleased to see fewer competitors in the marketplace, it would have spelled death to numerous smaller carriers with no other compliance alternative.

Some large U.S. carriers have asserted that the DOT exemption policy is unfair to them. This claim simply doesn't ring true. To the extent such carriers have acquired compliant aircraft, they have done so for fuel efficiency and operating reasons. Moreover, they had many unique advantages in achieving "compliance." Most of these carriers' four-engine aircraft were approaching the end of their useful depreciable life spans and would have been retired in the next eight years following 1976 with or without the noise regulations. These carriers purchased new aircraft because increased jet fuel prices had rendered the four-engine B-707s and DC-8s totally uneconomical at the high utilization rates demanded by the large carriers. Moreover, their planes were old aircraft that simply could not meet the forecasted domestic consumer demand, which required highly reliable, high earning capacity new design aircraft to assure profitable service.

Significantly, the large U.S. carriers were required to commit a much smaller proportion of their revenues toward compliance than that now expected of small petitioning carriers. For these small carriers, acquisition of hush kits at $2.5 million per aircraft represents the equivalent of an outlay of hundreds of millions of dollars for a carrier that is a hundred times larger. Moreover, the diversification in fleet composition of the large U.S. carriers allowed compliance to be accomplished without financial strain. Significant numbers of their aircraft at the time of the adoption of FAR Part 91 were compliant types—B-727-200s, DC-10s, L-1011s, and B-747s. This fact alone meant that the airlines could spread the cost of compliance over a much larger fleet of revenue generating equipment than can the petitioning carriers.

Significantly, ATA carriers also received exemptions through the ICAO date of January 1, 1988 for over 400 twin-engine jets, including 49 aircraft of United Airlines, 58 aircraft of Eastern Air Lines, and 95 aircraft of Republic Airlines. This exemption saved these carriers hundreds of millions of dollars in replacement costs, but were of no use to the smaller carriers that had to rely on four-engine jets for the payload-range requirements of their route structure. The airlines able to afford new equipment or re-engine older aircraft were also able to enjoy the sizable tax benefits of their investment.

Having contracted for replacement of their older four-engine jets, the major U.S. carriers then sold them off to smaller U.S. and foreign carriers, which have always depended on the second-hand market for aircraft acquisition. This is particularly true of Miami's international cargo market, where freighters have always been converted last-generation passenger planes.

Some carriers have complained vigorously that the FAA's policy will damage the environment, betray airport neighborhood residents, and eviscerate the FAA's entire noise policy. This simply isn't so. The FAA's noise abatement program has been, and will continue to be, remarkably successful. This success has largely come through continually requiring new aircraft to incorporate improved noise reduction technology. Further, the January 1, 1985 compliance deadline has stimulated the development of retrofit technology for the four-engine jets. Although this production has lagged behind the deadline, hush-kits will soon be available for almost all B-707s and DC-8s, and these aircraft will then also be brought into compliance. Grant-

ing extensions of time pending hush-kit installation does not diminish the rule's effectiveness, but simply allows a reasonable and temporary accommodation to be made where necessary. The FAA routinely grants exemptions from almost all its rules, and so do other agencies in similar situations.

On the subject of environmental effect, however, it should be emphasized that the four-engine jets in question are not a significant part of our nation's noise problem. Even if exemptions were granted liberally, there would be relatively few of these aircraft operating. At Miami International, which accommodates more of these aircraft than any other airport, we found that they make no discernible contribution to the cumulative noise level. Most of the noise, at Miami and elsewhere, comes from B-727s. This is not only because there are so many of these aircraft, but because in many instances the actual takeoff noise level of the B-727-200 is higher than that of the Stage 1 four-engine jets. After measuring 2,000 aircraft operations at Miami, we found that the B-727-200 aircraft averaged 97 dBA on take-off at the FAR-36 noise measuring points, whereas B-707s and DC-8s averaged 94 dBA (3-dBA quieter). The reason for this is that the B-727-200s were loaded up almost to maximum gross takeoff weight for 1,000 mile to 1,500 mile flights from Miami to Boston, Chicago, New York, etc., whereas the B-707 and DC-8s, although having a 30-40 ton payload, had a very light fuel load for their 1,000-1,500 mile flights from Miami to Antigua, Barbados, or Costa Rica. Consequently, their takeoff weight is very moderate, takeoff and climb performance is excellent, and they are fairly high and therefore fairly quiet, when they pass over our city east of the airport. Although many large U.S. carriers have depicted the B-707s and DC-8s operated by their smaller competitors as the bogeymen of the noise problem, I would suggest that the real villains reside in large numbers in their own fleets. I am sure every director of a U.S. airport would agree with me.

Finally, although we are generally supportive of the new standards, and although they certainly represent a major improvement over previous FAA policies, we would like to make note of some specific problems we see. The proposed standards contain a number of thresholds and restrictions which we believe will frustrate their usefulness to carriers in need of relief.

One of these is the requirement that a carrier sign its hush-kit contract by March 29, 1985. There is no logical significance to this date. Nor does it promote the overall commitment to noise abatement. Carriers who have been unable to contract, or who contracted for some aircraft earlier and only more recently have been able to contract for additional aircraft in their fleet, will now be discouraged from contracting, to the ultimate disadvantage of the hush-kit industry and a number of otherwise qualifying carriers. In the context, we cannot overemphasize the importance of doing everything possible to encourage the hush-kit industry to expand, rather than curtail production. Only through such encouragement will it be possible to achieve total compliance in the near future.

The financial havoc standard is, we believe, also too rigid. Many carriers who may not meet the two specific financial tests set forth in the standards may still suffer severely from elimination of their U.S. operations because they are a source of vitally important U.S. dollars, or are essential to the company's cash flow. In the Miami-Bangor legislation, Congress did not require any showing of individual financial havoc. Rather, the measure's Co-sponsor Senator Hawkins stated on the Senate floor:

"[W]hat we have in effect done is to determine, by passage of the Amendment, that carriers conducting international operations out of Miami and Bangor, and which operate aircraft that can be brought into compliance by hush kits currently under development, meet the exemption requirements of the Aviation Safety and Noise Act with respect to 'valuable air service,' 'financial havoc,' and delayed or unavailability of necessary technology for compliance. We have further established specific criteria for determining whether an applicant for exemption is making a 'good faith effort at compliance.'"

We would urge DOT to follow a similar approach in granting ASNA exemptions, or at the very least to retain flexibility to modify the financial havoc standards if the individual circumstances of the carrier warrant such action. In this context we note that substantial debt or a history of losses could result in a carrier facing financial havoc even if it doesn't meet the LAC standards.

Miami also is not satisfied with the restrictive manner in which the FAA has interpreted the frequency provision in the Hawkins-Chiles legislation. Although this provision was clearly intended to maintain the existing level of service, and prevent carriers from increasing their daily or weekly frequency of service at Miami, the FAA interpreted this language to place an absolute cap on the number of annual operations. For most carriers this made no practical difference, but for some, such

as Sterling Airways and Challenge Air Transport, because the carriers did not operate a full year, real hardship has resulted.

In conclusion I would like to reiterate our position: although it remains to be seen how DOT's new policy will be implemented, the Department of Transportation has come a long way from FAA's original intractable and unreasonable position. The Department now appears to be dealing with the problem realistically, and for this it is to be commended.

TESTIMONY OF ASSISTANT DIRECTOR OF AVIATION AND EXTERNAL AFFAIRS, CLAIRE BARRETT, MASSACHUSETTS PORT AUTHORITY

Mr. Chairman, Members of the subcommittee I want to thank you for providing us the opportunity to talk with you today about the DOT/FAA exemption policies for noisy aircraft.

I am Claire Barrett, Assistant Director of Aviation for external affairs at the Massachusetts Port Authority. We operate Boston-Logan International Airport, the tenth busiest passenger airport in the US, and the eighth busiest in operations.

As many of you know who have used Logan, it is located in the heart of Boston, just minutes from the downtown financial district. Our location makes Logan one of the nation's most convenient airports, but that convenience also makes it one of the nation's most noise impacted airports. Logan is surrounded on three sides by densely populated communities. About 100,000 people live with Logan's Ldn 65 contour, and there are three neighborhoods in East Boston and the neighboring town of Winthrop which have an annual noise exposure above 80 Ldn. FAA defines serious noise levels as anything above 65 Ldn, and their recently promulgated standards state that areas above 65 Ldn are unfit for residents without significant sound insulation. Areas above 75 Ldn are considered unfit for dwelling altogether. Some East Boston residents live as close as 1400 feet from a major jet runway, and roughly 30 houses are located directly within the clearzone of one of our parallel runways.

During the last nine years our neighbors have worked with us, the airlines, the FAA, and members of our Congressional delegation to reduce the noise impacts of Logan Airport. During that period we have accomplished a great deal including several first in the nation programs as we have learned to work together, and accommodate each others' needs.

During this period, Massport has adopted noise rules and regulations including restrictions on noisy aircraft; we have developed a preferential runway system, (the first computer operated system of this type in the country); we have worked to reduce ground noise; we have changed flight tracks, (the first EIR on a flight track change in the country), and we have taken airlines that violate our rules to court and seen them fined. We have successfully soundproofed schools,'(the first publicly financed school soundproofing program in the country), and we are presently carrying out a pilot program to soundproof homes around the airport. The last nine years in Boston have not been easy but they have been at least characterized by "good faith" on all sides with a commitment to continue to work together to improve on our noise abatement programs.

But now all of these programs which have been joint efforts of the airport, the FAA, the airlines and the community are in jeopardy due to increasing public distrust and doubt over federal noise abatement policies, as well as the probability of enforcing deadlines presently mandated by law. Today, there is a great deal of cynicism about the federal government's real commitment to noise abatement and that cynicism can be traced directly to the way in which the exemption policies have been managed or mismanaged by the FAA.

Since you opened hearings on this subject Mr. Chairman, you have heard much testimony on the damage both current and future, which the FAA's handling of the exemption issue has caused. Evidence of this is not only apparent in the reasons put forward by industry leaders from both the airlines and the airports, not to mention the judiciary, but even more dramatic is the concurrence on this issue between such diverse and occasionally antagonistic entities.

I will not reiterate the positions so adequately and fully presented by Delta Airlines, and the National Air Carrier Association and by others. Let me simply focus on points where, as airport proprietors, we feel that we have a particular interest.

First, all the testimony I have read to date accepts the applicability and legitimacy of the five criteria from the ASNA act as appropriate for the granting of exemptions. This interpretation is unclear. The Part 91 statutory language is quite clear on the subject of deadlines and exemptions. Indeed FAA itself took the position that no exemptions were justified. Only at the very end of 1984, while searching for an

explanation for an obvious change of heart, were these five criteria unearthed in a conference report. They were then brought forward as an official set of criteria mandated by Congress.

What is more, in his testimony before this same committee, Matthew Scocozza representing the Department of Transportation, makes reference to the same conference committee report as the basis for "blanket exemptions" to 2 engine aircraft capable of providing service to small communities. If FAA and DOT wish to rely on congressional intent rather than statutory language then perhaps the 500 exemptions under the small community service provision ought to be reconsidered in the same light.

In Boston more than 13% of total operations were conducted in these exempted 2 engine aircraft during 1984. And, what is more important the cities they serve, Pittsburgh, Philadelphia, Washington, D.C. among others can hardly be categorized as "small communities." So, if the intent of Congress is really uppermost in the minds of FAA and DOT officials then these exemptions should have been limited to cities vulnerable to a complete or significant cessation of air service if small aircraft were unavailable.

In total, the small community exemptions, the Miami-Bangor exemptions and the recent DC-8, 707 exemptions under discussion have amounted to 600 aircraft nationwide. More than 9% of the total fleet of all the air carriers serving Logan are still in stage 1 aircraft, and this does not count the 4 engine charter aircraft which are the actual subject of this hearing. Thus, the rather cavalier and across the board method of granting exemptions by FAA has significantly increased the noise levels at Logan and in the whole nation over what was originally contemplated under ASNA and FAR Part 91.

The reaction from communities around Logan has been predictable. Pressure for increasingly stringent noise rules at the local level has grown. No longer will the public accept federal schedules under Part 91 as a given. On the contrary, they are not only angry about the four engine aircraft, but are already accepting as gospel that the 1988 deadline for 2 engine aircraft will also fall.

Our Board of Directors has shown an increasing interest in rewriting our noise rules and regulations to protect against any such weakening of national standards. Indeed they have quizzed me about why the staff had not already recommended a local rule to protect against erosion of the Part 91 standard as the New York Port Authority had the foresight to do. As a result, the staff at Massport has been heavily engaged in reassessing our current noise rules and regulations and is considering possibilities for new approaches. Among the proposals under serious scrutiny is a regulation to protect Boston from future operation in stage 1, non-compliant aircraft.

An airport situated as close to residences as we are simply has no choice, but to protect its neighbors from the highest levels of aircraft noise. To give an example, a stage 1 707 aircraft at the Part 36 measuring points emits 118.5 dB on approach, 113 dB on takeoff and 102.1 dB at the sideline. These are excruciating noise levels, by any standard, but they become truly unbearable when a resident knows that he is experiencing that noise only because a commitment of many years duration has been reneged upon.

In conclusion, I would like to leave you with some recommendations for action:

First, if Congress did not intend blanket exemptions for stage 1, 2 engine aircraft or for stage 1, 4 engine aircraft, then this should be made very clear to FAA and existing exemptions should be rescinded.

Second, if Congress did indeed mean that the five criteria listed by FAA as grounds for exemption be used for that purpose, then those criteria must be consistently and seriously applied. Simply stated, all five must apply in each application, and such expressions as "valuable service" must be defined so that all services do not indiscriminately meet this standard.

Finally, support must be given to local airport operators, who due to the nature of their geographical situation must take steps to protect their neighbors from unreasonable levels of aircraft noise. For, if such steps are not taken, serious dissention inevitably occurs which frequently results in litigation and inhibition of the aviation industry as a whole. A long-sighted, pro-aviation stand must include a thoughtful, environmental and community component.

Thank you.

ADDITIONS TO THE RECORD

WRITTEN COMMENTS OF HON. BEN BLAZ, CONGRESSMAN FROM GUAM

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I ask you to consider and remedy the recent harmful actions taken by the Federal Aviation Administration (FAA) in grounding and effectively destroying South Pacific Island Airways (SPIA) and the service it provides to Guam.

The FAA decided on June 17, 1985 to ground SPIA for alleged bad faith in failing to install "hush kits" on its 707's as required by FAA's noise regulations. Prior to the grounding SPIA had been granted exemptions to these regulations.

Guam's tourist economy is inextricably tied to the availability of reliable and affordable air transportation. Nearly every tourist arrives on Guam through the doors of an airliner. Surrounded by thousands of miles of open ocean there is no other feasible alternative for access to Guam. When the airlines are grounded or air service otherwise interrupted no longer crowd our hotels and shopping plazas.

On the mainland, with alternative means of transportation readily available the loss of an air carrier does not spell immediate economic disaster for most communities and carriers. We Guamanians, in our oceanic isolation, are not similarly endowed with options. Recent action by the FAA in applying noise regulations to SPIA upset that delicate balance. The FAA has threatened our economy and SPIA's continued existence.

Why then does the FAA insist upon applying noise regulations developed for mainland airports to Guam? Mainland runways are seldom as short as the runways in Micronesian airports. Our runways average less than 7,000 feet in length. With so little space to land SPIA's 707's cannot safely employ the shallow flap stateside procedure demanded by the FAA for noise abatement. FAA's noise regulations endanger not only our economy but also our lives.

Application of these regulations has resulted in the grounding of SPIA. Nearly 300 employees have been furloughed by SPIA pending the resolution of this dispute. SPIA's three weekly flights from Guam to Honolulu were cancelled. Every seat on these flights was reserved. Their cancellation resulted in great inconvenience to the passengers and the loss of substantial income to SPIA and to Guam. Guam's economic isolation becomes more complete with each passing day. Again, Guam depends on air service for its vitality. The same cannot be said of stateside communities. The rationale for imposing the noise regulations on Guam loses its meaning when the end result is economic stagnation. Guam will indeed be noise-free when the doors to the last tourist hotel close.

Another victim of the FAA's imposition of the noise regulations is competition. SPIA's entry into the Guam air service market had a profound effect on the price of travel in the Western Pacific. Prior to SPIA's appearance Continental/ Air Micronesia was the only air carrier between Guam and the other islands of Micronesia. At that time, for example, the price of a one-way ticket between Guam and Palau was $240. SPIA entered the market with a one-way ticket to Palau costing $125. Continental responded by dropping its one-way ticket price on the weekends to $125. Continental kept its weekday one-way ticket price at $240. SPIA has since further lowered its one-way ticket price to $88 during the summer high season and to $75 during the low season. This is the great benefit of competition.

Air fares have been and continue to be expensive in Micronesia. Palau is 1,300 kilometers distant from Guam. This is about the same distance from Chicago to Fort Worth, Texas. Continental currently offers a one-way coach ticket between Chicago and Fort Worth for the price of $120-$140. As you can see, the price of travel from Guam to Palau on Continental is nearly twice as much as the price to travel the same distance on Continental from Chicago to Fort Worth. SPIA's presence can only continue to lower the cost to the travelling public. At present with SPIA on the ground Continental is again the only airline. Its fares remain above those offered by SPIA. The FAA's policies have once more burdened Guam without a concurrent benefit. These policies must change.

I ask this Committee to adopt guidelines to make the FAA more receptive to the entreaties of Guam and of other island communities. In considering the granting of exemptions to the noise regulations the FAA should consider Micronesia's nearly total dependence on air service. It should examine the drastic effect of any break in air service on Micronesia's tourist industry as well as its mail service. It should review the wisdom of requiring noise abatement procedures which given the length of our runways endanger human lives. The FAA should consider the world of difference between the mainland and Micronesia. We are different and deserve different treatment.

I am providing the Subcommittee with a copy of Resolution No. 134 adopted by the Eighteenth Guam Legislature on June 18, 1985. The Guam Legislature stands firmly and eloquently for continued air service by SPIA.

EIGHTEENTH GUAM LEGISLATURE
1985 (FIRST) Regular Session

Resolution No. 134 (LS)

Introduced by: A. R. Unpingco
J. P. Aguon
T. S. Nelson

J. F. Ada
E. P. Arriola
J. G. Bamba
F. F. Blas
H. D. Dierking
E. R. Duenas
C. T. C. Gutierrez
F. J. Gutierrez
A. C. Lamorena III
P. C. Lujan
M. D. A. Manibusan
D. Parkinson
F. J. Quitugua
J. M. Rivera
J. T. San Agustin
F. R. Santos
T. V. C. Tanaka

Relative to requesting the Secretary of Transportation to permit South Pacific Island Airways to operate in United States Airports.

BE IT RESOLVED BY THE LEGISLATURE OF THE TERRITORY OF GUAM:

WHEREAS, South Pacific Island Airways operates in the Pacific Region serving the territory of Guam, the Republic of Palau, the Republic of the Marshalls, New Guinea, the State of Hawaii, the Commonwealth of the Northern Mariana Islands and Samoa; and

WHEREAS, the Federal Aviation Administration denied SPIA's petition to continue operating in United States Airports pending installation of "hush kits" in their Boeing 707 Aircraft; and

WHEREAS, the curtailment of service has brought hardships to those travelling from Guam because there remain only two other carriers providing service to the mainland United States; and

WHEREAS, the suspension of SPIA's service has resulted in substantial difficulties in transporting mail between Guam and Honolulu; and

WHEREAS, the use of this type of aircraft has resulted in substantial savings in air transportation costs in the Pacific Islands for passengers and has increased the amount of cargo which can be sent via air; and

WHEREAS, SPIA has been actively involved in supporting community activities since it began serving Guam by providing free transportation to the children being treated at Shriners Hospitals; providing special medical referral fares and donating in various charitable fundraising activities; and

WHEREAS, the loss of SPIA has once again unnecessarily burdened the people of Guam, Micronesia and South Pacific Islanders; and

WHEREAS, the basis for the suspension of service does not involve the safety of the passengers caused mainly by an unacceptable noise level; and

WHEREAS, presently there are numerous military aircraft making much more noise than SPIA's Boeing 707's that land daily at the Naval Air Station, which runways are jointly used by the civilian airport authority and military authority; and

WHEREAS, there is no United States policy to require military aircraft to comply with noise abatement regulations; and

WHEREAS, the service SPIA provides is essential to the well-being of Guam and several other Pacific Island communities; now, therefore, be it

RESOLVED, that the Eighteenth Guam Legislature respectfully request the Honorable Elizabeth Dole, Secretary of Transportation, to permit South Pacific Island Airways to operate its Boeing 707's in United States Airports; and be it further

RESOLVED, that the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the Honorable Elizabeth Dole, Secretary of Transportation; to Congressman Ben Blaz; to South Pacific Island Airways and to the Governor of Guam.

DULY AND REGULARLY ADOPTED ON THE 18TH DAY OF JUNE, 1985.

ELIZABETH P. ARRIOLA
Senator and
Legislative Secretary

CARL T. C. GUTIERREZ
Speaker

BILL BONER
5TH DISTRICT, TENNESSEE

COMMITTEES
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CHAIRMAN
CONGRESSIONAL
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Congress of the United States
House of Representatives
Washington, DC 20515

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WASHINGTON OFFICE
ROOM 107
CANNON HOUSE OFFICE BUILDING
202-225-4311

May 22, 1985

Honorable Norman Mineta
Chairman
Subcommittee on Aviation
Committee on Public Works
2251 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find a copy of a statement we would like to submit for the record. While we were unable to attend the subcommittee's hearing, we do believe that the issue of limited noise exemptions so that the maintenance facilites at the airport in Smyrna, Tennessee can continue to be utilized is vital. In our view, the economic impact of a healthy maintenance operation in Smyrna greatly outweighs the minimal increase in noise. Put another way, should the maintenance operation be forced to close, the loss of jobs could never be compensated by reduced noise.

Thank you for your interest in this matter. If we may be of further service to you in this or any other matter, please do not hesitate to let me know.

Sincerely,

Bart Gordon
Member of Congress

Bill Boner
Member of Congress

STATEMENT OF CONGRESSMAN BILL BONER

I would like to call the Subcommittee's attention to a situation that may get lost in all the talk today, but one which could mean a lot to the people of Tennessee. We have extensive facilities at Smyrna, Tennessee for performing maintenance on DC-8 aircraft. In the past, airplanes from around the world have used these maintenance facilities, which last year at this time employed over 200 people.

Regardless of what the Congress decided to do about banning Stage 1 aircraft in the United States, these aircraft are still being used in foreign countries. There is a market for U.S. maintenance services that should be encouraged. We need to maintain skilled mechanics' jobs. But the FAA's noise exemption policies are senselessly throwing American workers out of their jobs.

Foreign airlines that do not operate scheduled services to or from this country have no economic incentive to install hushkits just to come into this country once or twice a year for maintenance. Foreign airlines that want to spend millions of dollars in the U.S. are being forced to go elsewhere because the FAA will not grant very limited exemption to ferry aircraft to the U.S. for maintenance. The FAA's narrow-minded policies are depriving the U.S. economy of millions of dollars of revenue at a time when we are all struggling with what to do about a mounting trade deficit.

Although U.S. airlines have objected that it is unfair to grant exemptions after they have invested in new aircraft, this argument clearly has no merit under these circumstances. Foreign airlines that seek exemptions only for maintenance pose no competitive threat to U.S. airlines.

We are not talking about a significant number of flights. The total impact of granting limited exemptions to perform major maintenance would probably amount to several hundred flights annually. In the case of the Smyrna Airport, I can assure you from first hand experience that noise is simply not a problem because of its rural location. The people rightly care about preserving their jobs.

At a time when the FAA is granting exemptions involving a far greater number of operations, it seems only fair to me that the FAA should look at the overall equity of its policies. It does not make sense to apply one set of exemption criteria to all factual situations. The FAA may believe that its prior exemption orders were invalidated by the court because it failed to treat all applicants alike. But when applicants are in very different positions, it is discriminatory to treat everyone alike. Instead, I urge the FAA to develop liberal exemption criteria that will promote foreign carriers' use of U.S. maintenance facilities.

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June 7, 1985

Honorable James J. Howard, Chairman
Committee on Public Works and Transportation
U.S. House of Representatives
12165 Rayburn House Office Bldg.
Washington, D.C. 20515

BY HAND

Re: The Aviation Subcommittee's Hearing on DOT's and FAA's Policies on Exemptions from Aircraft Noise Emission Regulations, May 22, 1985.

Dear Mr. Howard:

I am submitting this letter as testimony on behalf of Aeromar C, por A, a Dominican scheduled all-cargo carrier, and Aeromar Hush Kit Corporation (AHKC), pursuant to your notice dated May 3, 1985. The notice states that written testimony for the record will be received through June 7, 1985.

The notice particularly focuses on FAA Exemption Number 4302 which sets forth the policies that DOT and FAA intend to follow in the future and the consistency of those policies with Congressional intent and with the public interest.

Some witnesses have attacked the standards promulgated in FAA Exemption 4302 as being unfaithful to the ASNA Conference Committee Report criteria, and too lenient. In our view, there are aspects of the criteria that are unfaithful to the Report and too strict.

AHKC applied to the FAA for an STC on December 3, 1984 for hush kits to modify all DC-8-50 series and DC-8-61 aircraft. It intends to use the hush kit to modify Aeromar's DC-8-54 and DC-8-55 aircraft, and also to offer the modification on the market to other airlines. (Aeromar intends to obtain a Dominican STC for its DC-8-33 aircraft.) AHKC is currently and continuously engaged in active hush kit development, but the arbitrary standards of Exemption 4302 would prevent the fruition of its efforts in two ways: (1) There is no way to obtain an STC for its hush kit by September 30, 1985, and (2) since it was not listed by the FAA as a "bona fide supplier" in connection with the Hawkins-Chiles Amendment, prospective customers have not contracted with it and any new contracts must perforce be entered into later than March 29, 1985.

The ASNA Committee Report criteria urge the FAA to grant an exemption if, inter alia, the carrier is making a good faith effort to comply but the needed technology is either delayed or

LAW OFFICES
HAUSMAN AND ROSENTHAL, P. C.

unavailable. Exemption 4302 clearly violates that criterion in establishing the above two dates arbitrarily and refusing to examine each case.

Please note that while the Boeing Company and NASA flight tested (but did not obtain an STC for) a hush kit model for the B-707 in the 1970's, there was never even that much development of technology for the DC-8. The Douglas Aircraft Company so testified before The House Aviation Subcommittee in 1975-76. (Committee Print 94-36, p. 313).

Aeromar and AHKC have been engaged in hush kit development since 1983, and have spent close to a $1 million so far. AHKC has engaged the services of William F. Channa Associates, Inc., and DyTech Engineering, Inc., which are leading organizations in the field of aeronautical acoustics engineering. Aeromar and AHKC stand to lose their investment, and Aeromar and other U.S. and foreign operators stand to lose the use of their aircraft, if the FAA persists in applying the arbitrary exclusionary rules that it announced in Exemption 4302.

No other supplier is expected to meet the September 30, 1985, STC deadline for DC-8-50 series and DC-8-61 aircraft. The FAA knows that, and knows, therefore, that the arbitrary dates in Exemption 4302 will stifle hush kit development for the DC-8-50 series and DC-8-61 aircraft.

In view of the foregoing, we urge that any report that Committee may issue, for the guidance of the FAA, call upon the FAA to drop these arbitrary dates and foster the development and certification of hush kits for these useful aircraft. We have no objection to the FAA monitoring the activity of AHKC and other hush kit developers, and carriers, to be sure that their efforts to achieve compliance are substantial and continuing. If they are, that element of the ASNA Committee Report criteria is met, without any arbitrary dates.

Respectfully submitted,

Robert M. Hausman, Esq.,
on behalf of Aeromar C, por A.
and Aeromar Hush Kit Corporation

RMH:cls
H12-B14-15

EMBAJADA DE COLOMBIA

WASHINGTON, D. C.

No. 0688

May 30, 1985

Honorable
Norman Y. Mineta
Chairman
Aviation Subcommittee, Committee
on Public Works and Transportation
U. S. House of Representatives
2350 Rayburn Building
Washington, D.C. 20515

Dear Chairman Mineta:

It has come to my attention that your Subcommittee is conducting hearings on the policy of the Federal Aviation Administration concerning exemptions from the U.S. aircraft noise regulations. As this is a matter of great importance to the Government of Colombia, I would appreciate your considering our views as you deliberate on this matter. The Embassy of Colombia has already communicated its views formally in a diplomatic note (N°92/E-266, August 30, 1984) to the U.S. Department of State.

We fully understand the importance of the FAA regulations designed to reduce aircraft noise at airports, and Colombian airlines are committed to complying with those regulations as rapidly as possible. However, in considering requests for exemptions from these regulations, the United States Government should consider the grave importance to many foreign nations that these aircraft be permitted to operate until the quieting technology for which they have contracted can be installed.

Three of the five Colombian airlines flying into the United States -LAC, ARCA, and TAMPA- have only the four engine aircraft affected by the regulations. They use these aircraft to provide absolutely essential air cargo services to Colombia. In 1984, they carried over 18.000 tons of cargo between our nations. This is approximately 33% of the total U.S.-Colombia air cargo market. Accordingly, though these are very small carriers, the service they provide is vital to the Colombian economy. This is especially true with respect to the exportation of perishable goods, particularly cut flowers, which are Colombia's largest air freight export. Flowers alone accounted for $160'000.000 in revenue to Colombia in 1984.

The commerce carrierd on these aircraft is important to the United States as well. In addition to being an important source of imports, Colombia is one of the largest markets for U.S. products in South America.

Colombian carriers are continuing to make a sincere effort to bring their aircraft into compliance with the rules as quickly as possible. To this end, they have contracted for installation of hush kits, at an expense which is very great in relation to their size. It also represents a considerable risk for them to contract for devices which have only recently been developed, by newly-formed companies, and have never before been used.

It is erroneous to think these carriers could have come into compliance earlier by purchase or lease of compliant aircraft. These are very small carriers, with fleets of no more than a few aircraft. They could not possibly afford newer-generation aircraft. The DC-8 and B-707 aircraft are the only ones feasible for these carriers to use at this time. Compliant wide-body aircraft are both too expensive and too large. The size of the market does not justify daily service with wide-body aircraft, yet the nature of the perishable products requires daily service to Miami. Other types of aircraft would have neither the capacity nor the range necessary for the flight. Thus, if these three carriers' B-707s and DC-8s were grounded, Colombia would suffer a serious loss of cargo lift, and this would have damaging effects on our economy.

The affected Colombian carriers are committed to complying with the FAA regulations, and have on order the equipment necessary to accomplish that goal. However, it would be unfair to these small carriers, which perform such a valuable service, to shut them down when they have done all in their power to comply. The FAA has granted TAMPA an exemption under the Hawkins-Chiles legislation and IAC and ARCA have received exemptions pursuant to the 1979 Aviation Safety and Noise Abatement Act and general FAA exemption authority. We trust the FAA will permit them to continue to operate until their hush kits, which are on order, can be installed.

I would appreciate your placing this correspondence in the record of your proceedings.

Sincerely,

Rodrigo Lloreda
Ambassador of Colombia

STATEMENT OF THE PORTS AUTHORITY OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS ON FEDERAL AVIATION ADMINISTRATION POLICIES ON EXEMPTIONS FROM AIRCRAFT NOISE EMISSION REGULATIONS

HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, SUBCOMMITTEE ON AVIATION

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Counsel for
THE PORTS AUTHORITY OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

June 28, 1985

The Ports Authority of the Commonwealth of the Northern Marianas ("Ports Authority of the Northern Marianas") is pleased to have the opportunity to submit a statement on the noise exemption policies of the Federal Aviation Administration ("FAA"). The Ports Authority of the Northern Marianas respectfully submits that the FAA's noise exemption policies have been unreasonably restrictive. The FAA has consistently denied the noise exemption applications of carriers serving the Northern Marianas and the Pacific basin, despite the involved communities' support for such applications. Consequently, the Northern Marianas and the other remote islands in the Pacific are being denied air service essential to their economic well-being. Therefore, the Ports Authority of the Northern Marianas urges the Subcommittee to adopt policy guidelines which will require the FAA to formally consider the views of affected communities when ruling upon applications for noise exemptions. Such guidelines will establish for mainland communities, where aircraft noise is a serious problem, a mechanism whereby they can petition to the FAA to deny noise exemptions for carriers serving their areas. On the other hand, remote island communities such as Saipan on the Northern Marianas may elect to forego the supposed "benefit" of the FAA's noise regulations in order to avoid the economic havoc that could occur if noise exemptions are not granted. These communities should

be permitted to exert significant influence on FAA noise exemption decisions which so directly affect them.

The Northern Marianas are located at the extreme western edge of the United States' air transportation system, thousands of miles from the mainland. The economy of this geographically-isolated island community is heavily dependent on tourism, its major industry. The Northern Marianas' tourist industry is, in turn, heavily dependent on air service with Japan, which accounts for over 90% of the visitors to the Islands. The only practical means for Japanese tourists to reach the Northern Marianas is by air. Scheduled and charter air services, therefore, establish an essential social and economic transportation link between the Northern Marianas and Japan, the Islands' principal economic community of interest. The FAA's denial of past noise exemption requests has already reduced the number of flights between Japan and the Northern Marianas. This development will deprive the Islands of substantial tourist revenues, and has already begun to have a severe impact on the Northern Marianas' economy.

Furthermore, since the Northern Marianas have virtually no aircraft noise problem, there is little or no need for noise emission regulation of aircraft flying to or from the islands. Saipan, unlike most mainland communities, has its airport approach paths located over open water. Thus, aircraft noise has

little, if any, impact on populated areas. Clearly, the FAA's restrictive exemption policy was designed to apply to carriers serving mainland airports near population centers. This policy makes little sense when applied to carriers serving remote Pacific islands.

The Ports Authority of the Northern Marianas has petitioned to the FAA in support of the applications for noise exemptions by carriers serving the Northern Marianas. However, the FAA has not given sufficient weight to these comments in ruling on such applications. In formulating its noise exemption policies, the FAA has thus disregarded the unique circumstances of the Northern Marianas and other remote islands. The Ports Authority of the Northern Marianas urges the Subcommittee to produce guidelines requiring the FAA to consider the views of affected communities in reaching decisions on noise exemption applications. Such guidelines are in the public interest, and will not hinder mainland communities' efforts to enforce strict noise regulations.

The Ports Authority of the Northern Marianas appreciates this opportunity to convey to the Subcommittee its views on this important aviation issue.

[Telegram]

KORORPALAU, REPUBLIC OF PALAU,
May 19, 1985.

Hon. NORMAN MINETA,
Chairman, Subcommittee on Aviation,
House of Representatives, Washington, DC.

The Republic of Palau has been advised that your subcommittee will be holding hearings this month concerning the policies of the FAA with regard to exemptions from noise regulations and impact of those policies upon affected nations. Due to short notice of hearings, we are unable to attend and present oral testimony.

President, Republic of Palau, strongly urges your subcommittee to direct FAA to give favorable consideration to granting temporary exemption from noise regulations to those carriers who provide air service to the Republic. Necessary for FAA to recognize that there are substantial differences between small island nations with one or two flights per day to isolated airport and major metropolitan area with hundreds of flights. Differences are in two areas. First, noise impact of non-complying aircraft in this area is virtually non-existent, as opposed to major metropolitan area in U.S. Second, loss of one flight here would constitute loss of a substantial percentage of our air service. Economy in Republic is based exclusively upon newly developing tourism, and is quite fragile. If Republic is ever to achieve financial independence from U.S., it will be through development of our tourist industry. Failure of FAA to grant temporary exemption to noise regulations will strangle this infant industry.

We feel that it is significant that the flights which serve our nation, and for which an exemption has been sought, originate in Japan, and do not touch or otherwise affect the continental U.S. In light of that fact, we feel quite strongly that our wishes in the granting or denial of exemptions should be given a substantially greater amount of weight in the decisionmaking process of the FAA than has been the case in the past.

Again, Government of the Republic of Palau strongly urge and request that you take advantage of the opportunity presented by these hearings to direct the FAA to give favorable consideration to requests for temporary exemption from application of noise regulations when such requests are supported and requested by island nations, particularly when such exemptions will have no impact upon continental U.S., and will be of substantial benefit to developing nations.

Regards,

RUSSELL E. WELLER, JR., *Attorney General.*

MAY 16, 1985.

Subject: Exemption from Section 91.303 of the Federal Aviation Regulations.

Hon. NORMAN Y. MINETA,
Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation House of Representatives, Washington, DC.

DEAR CONGRESSMAN MINETA: I regret that I am unable to personally testify on the subject of aircraft noise exemptions granted by the Federal Aviation Administration. I understand you have scheduled hearings for May 22, 1985 and respectfully request your consideration of my testimony on this matter.

I am the Director of the Department of Transportation (HDOT) for the State of Hawaii. HDOT plans, constructs and maintains the highway, harbor and airport facilities to meet the transportation needs of our island state. HDOT is the sponsor and operator of a statewide system of airports which ranges from heliports and general aviation fields to the large hub, Honolulu International Airport (HIA).

During the 1984 calendar year, a total of 26,507,392 passengers in and out of Hawaii's airports. Of that amount 17,278,001 or 65% of the total traffic was generated at HIA. Although we expect HIA to continue to dominate the volume of activity, deregulation has drawn increased traffic to neighbor island airports from out-of-state destinations. The fastest growing is Kahului Airport on the Island of Maui which had 4,077,496 passengers or 15% of the state total in 1984.

Hawaii's preeminence as a tourist destination is well known. With the increased competition from foreign producers of sugar and pineapple, greater emphasis has been placed on the development of our visitor industry. Airports as well as other infrastructure needs are given high priority to assure attractive, convenient facilities and services.

Although we are sometimes handicapped by distance and time, we are aware of the activities in Washington which impact the very important air transportation system which serves our State. Through our Congressional delegation and various

trade associations, the legislative and regulatory activities of the Federal government are carefully monitored and we participate as actively as possible in recommending policy and procedures to be adopted.

We were pleased with the passage of Public Law 90-411 of 1968 and the Noise Control Act of 1972 which led to the adoption of Part 36 of the Federal Aviation Regulation (14 CFR 36) and Subpart E of Part 91 (14 CFR 91). For the first time we were able to predict with a reasonable degree of certainty the level of noise to be expected by future generations of aircraft using our airport facilities. Land use planning of the airport environs was possible and compatible land use assured growth in air traffic would not infringe upon the unique, open-air life style of our people. Transition of aircraft fleets from non-complying to those complying with 14 CFR 36 produced measurable reductions in noise levels at airports throughout the State.

However, at HIA we were faced with a unique situation involving joint-use of the same runways by civil and military aircraft. Part of the airfield is located within the boundaries of Hickam Air Force Base and all types of military aircraft, including those of other nations and none of which comply with 14 CFR 36, regularly operate in and out of the airport at all hours of the day and night. During 1984, there were 31,291 military operations or 9% of the 343,818 total operations at HIA. During the years of the Korean conflict, more than one-third of the traffic was military.

To cope with the serious noise impact experienced by communities directly under the takeoff path of both military and commercial aircraft, HDOT began studies in the early 60's for an alternate runway seaward of the airport. Although the U.S. Department of Defense withdrew its earlier financial support for the project, HDOT proceeded with the project known as the "Reef Runway" with financial assistance from the Federal Aviation Administration. At a cost of over $82 million, all large commercial and military jet aircraft have been moved more than a mile seaward which allows overwater departures. An elaborate noise monitoring system is maintained at HIA to check noise levels at several locations in neighboring communities.

Based on our experience with non-compliant aircraft, we did not object to the exemptions from the requirements of Section 91.303 of 14 CFR 91 granted by the FAA to certain airlines, such as South Pacific Airways and Hawaiian Airlines. As long as their operations were conducted on the Reef Runway, the noise impact would be negligible.

Further, HIA is the hub for air travel from many countries in the Central and South Pacific. To provide essential air service to communities with limited traffic, it is necessary to continue using the older, smaller aircraft. We support this service inasmuch as HIA is able to accept this type of aircraft and provide connecting service to all parts of the world.

In addition, charter service using non-compliant aircraft also has very little negative environmental impact as long as they use the Reef Runway. Charter and extra sections provide the additional capacity needed during peak tourist travel periods and are welcomed for economic reasons. Loss of this activity would have serious financial consequences for the tourist industry.

Unfortunately, our neighbor island airports do not have the benefit of runways which are directed away from residential and resort communities. The rural quiet of these areas are very sensitive to the harsh intrusion of aircraft noise. Therefore, HDOT has objected to and will continue to oppose the grant of exemptions to Section 91.303 of 14 CFR 91 for aircraft operating into any neighbor island airport in Hawaii.

In summary, it is recommended that:

Exemptions to Section 91.303 of 14 CFR 91 should not be granted except where an airport such as Honolulu International Airport can demonstrate such exemptions will not adversely affect the environment.

Such exemptions should be granted only for the period needed to install equipment certified to bring the aircraft into compliance with 14 CFR 36 but not to extend beyond 1988 when the noise standards of Annex 16 of the International Civil Aviation Organization take effect.

The size of the airline or the country of origin need not be a criteria for the grant of the exemption.

Your consideration of these views will be sincerely appreciated.

Very truly yours,

WAYNE J. YAMASAKI,
Director of Transportation.

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-1619

AIRMARK CORPORATION, PETITIONER

v.

FEDERAL AVIATION ADMINISTRATION, RESPONDENT

TRANSAMERICA AIRLINES, INC.,
DELTA AIR LINES, INC.,
AMERICAN AIRLINES, INC., INTERVENORS

No. 84-1654

CAREFREE VACATIONS, INC. &
WORLDWIDE AIRLINES, INC., PETITIONERS

v.

FEDERAL AVIATION ADMINISTRATION, RESPONDENT

TRANSAMERICA AIRLINES, INC.,
DELTA AIR LINES, INC.,
AMERICAN AIRLINES, INC.,
THE FLYING TIGER LINE, INC.,
NATIONAL AIRLINES, INC. and
AIR TRANSPORT INTERNATIONAL, INC., INTERVENORS

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

No. 84-1657

TRADEWINDS AIRWAYS, LTD., PETITIONER

v.

DEPARTMENT OF TRANSPORTATION &
FEDERAL AVIATION ADMINISTRATION, RESPONDENTS

TRANSAMERICA AIRLINES, INC.,
DELTA AIR LINES, INC.,
AMERICAN AIRLINES, INC.,
THE FLYING TIGER LINE, INC., INTERVENORS

Petitions for Review of Orders of the
Federal Aviation Administration

Argued February 27, 1985

Decided March 29, 1985

Herbert A. Rosenthal, with whom *Robert M. Hausman* was on the brief, for petitioners Airmark Corporation and Carefree Vacations, Inc., *et al.*

Joanne W. Young, with whom *Mahlon M. Frankhauser* was on the brief, for petitioner Tradewinds Airways, Ltd.

Anne S. Almy, Attorney, Department of Justice, with whom *Peter R. Steenland, Jr.*, Attorney, Department of Justice, was on the brief, for respondents. *James S. Dillman*, Attorney, Federal Aviation Administration, was on the brief for respondent FAA.

Donald T. Bliss, with whom *Carol R. Schenker, Jr.* and *Robert S. Harkey* were on the brief, for intervenors Delta Air Lines, Inc. and American Airlines, Inc.

Jeffrey A. Manley was on the brief for intervenor Transamerica Airlines, Inc.

Joel Stephen Burton, Alfred J. Eichenlaub, Robert L. Deitz, Ira T. Kasdan, and *Lawrence M. Nagin* were on the brief for intervenor The Flying Tiger Line, Inc. in Nos. 84-1654 and 84-1657.

Richard J. Kendall and *Eileen M. Gleimer* were on the brief for intervenors National Airlines, Inc., *et al.*, in No. 84-1654.

Charles E. Doyle was on the brief for United States Senator Nancy Landon Kassebaum, *amicus curiae*, supporting respondents.

Gary Keane was on the brief for Dallas-Fort Worth International Airport Board, *amicus curiae*, supporting respondents.

Roy Nerenberg, George T. Volsky, Lawrence D. Wasko and *Gary B. Garofalo* were on the brief for Airlift International, Inc., *et al.*, *amicus curiae*, supporting respondents.

Before ROBINSON, *Chief Judge*, and TAMM and WALD, *Circuit Judges.*

Opinion for the court filed by *Circuit Judge* TAMM.

TAMM, *Circuit Judge*: These expedited cases raise a series of related questions concerning the appropriate administration of Federal Aviation Administration (FAA) authority to grant exemptions from 14 C.F.R. § 91.303 (1984), a regulation that imposes noise standards on four-engine jet aircraft in commercial operations. Petitioners Carefree, Worldwide, and Tradewinds challenge as arbitrary and capricious the FAA denials of their petitions for exemptions from these standards. Petitioner Airmark challenges its partial exemption as being overly restrictive. Intervenors Delta Air Lines, American Airlines, Transamerica Airlines, and Flying Tiger Line argue that the FAA has no authority to grant exemptions and that, even if it has the authority, it has exercised that authority arbitrarily by granting a partial exemption to Airmark. We find that the FAA does have authority to grant exemptions. The agency's complete

failure to apply consistent criteria in granting or denying exemptions, however, compels us to vacate its actions and remand for proceedings consistent with this opinion.

I. Background

In 1968 Congress enacted section 611 of the Federal Aviation Act, 49 U.S.C. § 1431 (1982), granting the FAA broad authority to regulate aircraft noise. In response, the FAA promulgated a series of regulations addressing noise controls, in 1969, on future aircraft design,[1] in 1973, on future production of existing aircraft types,[2] and, in 1976, on aircraft currently in use.[3] The final regulations set a January 1, 1985 deadline for domestic operators to bring all four-engine aircraft into compliance with the noise controls.

Congress addressed the aircraft noise problem again in the 1979 Aviation Safety and Noise Abatement Act ("ASNA"), Pub. L. No. 96-193, 94 Stat. 50 (1979). ASNA provided that the January 1, 1985 compliance date set by the FAA for domestic aircraft would also apply to foreign aircraft operating in the United States unless the International Civil Aviation Organization ("ICAO")

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[1] 34 Fed. Reg. 18,355 (Nov. 18, 1969).

[2] 38 Fed. Reg. 29,569 (Oct. 26, 1973).

[3] 41 Fed. Reg. 56,046 (Dec. 23, 1976). These regulations created three classes or "stages" of aircraft. Stage 1 aircraft are those that were "type certificated" before 1969, manufactured before January 1, 1974, and were not subject to any noise requirements at the time of certification. These include the B-707s involved in the present cases, many of which were produced during the late 1950s and the 1960s. Stage 2 aircraft are those type certificated after 1969 or built after December 31, 1974, which must conform to the first mandatory noise standards issued by the FAA. In this category are B-747s, DC-9s, DC-10s, B-727s, and B-737s. Stage 3 aircraft are those for which applications for type certificates were made after November 5, 1975, which must meet the lowest noise levels that have, so far, become technologically practicable. The B-757s and B-767s are typical of this group.

adopted noise standards substantially compatible with the FAA regulations. 49 U.S.C. § 2122 (1982). In the report accompanying ASNA, the Conference Committee encouraged the FAA to consider granting exemptions from the noise control compliance deadline in certain "hardship" situations:

> [T]he FAA is urged to give consideration to hardship situations involving smaller carriers where the carrier is making a good faith compliance effort but needed technology is either delayed or unavailable and rigid adherence to compliance deadlines could work financial havoc and deprive the public of valuable airline service.[4]

In November 1980, after determining that the ICAO had not adopted standards similar to those in effect for domestic airlines, the FAA amended the noise regulations to apply the January 1, 1985 compliance date to aircraft in foreign commerce. 45 Fed. Reg. 79302, 79304 (Nov. 28, 1980). The FAA found that the language in the Committee Report provided the criteria that should be applied to exemptions from the 1985 compliance deadline. *See id.* at 79312. The FAA divides these criteria into five constituent factors: 1) the carrier's small size; 2) unavailability of technology for noise abatement; 3) the carrier's demonstrated good faith compliance effort; 4) financial havoc to the carrier if the regulation is strictly enforced; and 5) loss of valuable air service in the absence of an exemption.

Air carriers have had three ways in which to comply with the noise rules: (1) replacing noncompliant aircraft with compliant aircraft; (2) reengining noncompliant aircraft with newer, quieter engines; or (3) retrofitting engine nacelles and fan ducts with sound absorbing materials, or "hush kits." Most larger carriers chose to replace their noncompliant aircraft. The smaller air carriers now seeking exemptions chose instead to fit their

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[4] H.R. REP. No. 715, 96th Cong., 1st Sess. 23, *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 115, 124.

aircraft with hush kits. Although Boeing Corporation developed the technology for hush kits in the early 1970s, it dropped the program in 1978 due to lack of carrier demand. The impending noise deadlines reawakened the hush kit industry in 1984; delivery on FAA certified kits, however, is not expected until later this year. Unable to comply with the noise regulations before the deadline, small carriers, including petitioners in this case, sought exemptions from the FAA. As of February 1985, the FAA had received 145 petitions seeking exemptions for 300 aircraft. The FAA has granted 15 exemptions under its general rulemaking authority,[5] all but two[6] on or after December 28, 1984.

A. *Carefree Vacations, Inc. and Worldwide Airlines, Inc., No. 84-1654*

Carefree has served as a charter tour operator based in Chicago for over ten years. From April through June 1984 Carefree acquired three noncompliant Boeing 707-331B aircraft. Worldwide Airlines, Inc., a subsidiary formed primarily to operate flights for Carefree, leases these aircraft from its parent. On December 31, 1984, one day before the January 1 deadline, Carefree entered into a contract to purchase a hush kit for one of its aircraft. Carefree also took an option for delivery of two other kits. Installation of the hush kits is expected in late 1985.

On March 30, 1984, Carefree and Worldwide (hereinafter "Carefree") petitioned the FAA for an exemption from the January 1985 deadline. In a June 5, 1984 order,

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[5] The FAA has also granted 25 exemptions under legislation passed by Congress in 1984 granting specific relief for carriers serving Miami and Bangor Airports. Pub. L. No. 98-473, § 124, 98 Stat. 1837, 1970 (1984) (the Miami-Bangor legislation).

[6] *Icelandair*, FAA Docket No. 24,135 (Nov. 20, 1984); *Caribbean Air Cargo Co.*, FAA Docket No. 24,288 (Nov. 30, 1984).

the FAA denied the exemption, finding that it would be unfair to compliant airlines to grant Carefree an exemption since Carefree had acquired its aircraft knowing that it could not comply with the noise rules by January 1985. The FAA found that delay in the availability of hush kits did not justify granting an exemption because hush kit technology had been available for more than ten years. The FAA also saw no way to distinguish Carefree's financial burden in securing compliant aircraft from that of other operators who had expended the sums necessary to comply with the regulation.[7] On December 18, 1984, the FAA denied Carefree's petition for reconsideration.

B. *Tradewinds Airways, Ltd., No. 84-1657*

Tradewinds Airways, a United Kingdom carrier, has provided all-cargo charter service, primarily to Chicago, since 1971 and has offered scheduled service since 1983. Tradewinds began operating its three noncompliant Boeing B-707 aircraft in 1978.[8] Tradewinds executed binding contracts for the purchase of two hush kits on September 7, 1984, and expects that the kits will be installed in April 1985.

On April 3, 1984, Tradewinds petitioned the FAA for an exemption. On August 9, 1984, the FAA denied the exemption in an order that in large part mirrored the Carefree denial. The FAA noted that Tradewinds' increased domestic schedule began in 1983, long after the noise restrictions were made applicable to foreign carriers. Since the technology for hush kits had been available for ten years, the FAA was unmoved by Tradewinds'

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[7] *Carefree Vacations, Inc.*, FAA Docket No. 23,956 (June 5, 1984).

[8] Tradewinds leases two of these planes from Greyhound Equipment Finance, Ltd., and owns the third. Currently, Tradewinds operates only one of the planes in the United States. Another will be used in the United States as soon as maintenance work is completed.

inability to have hush kits installed until April 1985.[9] On December 27, 1984, the FAA denied Tradewinds' petition for reconsideration.

C. *Airmark Corporation, No. 84-1619*

Airmark is a United States charter carrier, operating a Boeing B-707 specially configured for use by corporate executives, foreign officials, and entertainers. Airmark purchased its aircraft in 1983 and began operations in August 1984. On July 6, 1984, Airmark contracted for installation of a hush kit, with a delivery date of May 31, 1985.

Airmark petitioned for exemption on April 2, 1984. The FAA's denial, dated June 5, 1984, parallels the Carefree and Tradewinds orders. Like Carefree, Airmark purchased its aircraft knowing that it would not comply with the FAA's noise rules; the FAA again noted that the unavailability of hush kits was no basis for exemption.[10] The FAA denied Airmark's petition for reconsideration on December 18. On December 28, however, the FAA *sua sponte* granted a partial exemption, stating that "the situation has changed."[11] The FAA found that Airmark's purchase of a hush kit contract was indeed evidence of good faith. Moreover, since Airmark would be forced to cease operations without the exemption, it had showed the necessary "financial havoc." The exemption contains significant restrictions: the exemption applies only until the expected installation date of the hush kits, a curfew is imposed, and Airmark may only operate at the airports it served in 1984. Airmark claims that these

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[9] *Tradewinds Airways, Ltd.*, FAA Docket No. 23,992 (Aug. 9, 1984).

[10] *Airmark Corporation*, FAA Docket No. 23,978 (June 5, 1984).

[11] *Airmark Corporation*, FAA Docket No. 23,978 (Dec. 28, 1984).

restrictions upon its unique charter service render the partial grant equivalent to an outright denial.

II. Discussion

The many issues raised in these cases fall into two broad categories. In Part A we address petitioners' and intervenors' contentions concerning the FAA's general authority to grant exemptions from the noise regulations. In Part B we address the claims that the FAA has arbitrarily applied different decisional criteria to similarly situated carriers.

A. *The FAA's Authority to Grant Exemptions*

The FAA has the power to grant exemptions from its regulations if "such action would be in the public interest." 49 U.S.C. § 1421(c) (1982). Petitioners contend that the Federal Aviation Act compels the FAA to adopt a more lenient exemption policy. Intervenors argue that legislation enacted after the noise rules were promulgated limits the FAA's authority to grant exemptions to the most exceptional circumstances. We find both of these arguments without merit.

Petitioners contend that the FAA's noise policy, as reflected in its regulations and exemption criteria, must be relaxed to conform to presently available technology. This argument rests on language in section 611 of the Federal Aviation Act, which states that in prescribing and amending noise regulations, the FAA shall "consider whether any proposed standard or regulation is economically reasonable, technologically practicable, and appropriate for the particular type of aircraft . . . to which it will apply." 49 U.S.C. § 1431(d)(4) (1984). *See* Brief for Carefree at 16-8; Brief for Tradewinds at 16 n.6; Brief for Airmark at 12. Petitioners contend that continued adherence to the January 1, 1985 deadline is technologically impracticable because hush kits are not yet commercially available and economically unreasonable because it results in the grounding of their noncompliant aircraft.

We find nothing in section 611 that compels the FAA to adjust the deadline due to the current unavailability of hush kits. The FAA has already determined the economic reasonableness and technological practicability of its noise regulations. There is no serious contention that this original determination was flawed. By setting the deadline eight years in advance, the FAA in 1976 sought to force the industry to develop commercially available hush kits.[12] The FAA reasonably concluded that the absence of a deadline perceived by the industry as firm would perpetuate the sluggish development of the hush kit industry. Indeed the demand created by the deadline has spurred the industry, albeit belatedly, into developing hush kits which should be available within the next year. To require the FAA to reevaluate its deadline would erode the foundation of its regulations. Industry would not develop the needed technology if it could anticipate either periodic adjustments of deadlines to reflect the anticipated availability of noise reduction technology or individual exemptions based solely upon a particular carrier's inability to comply with the regulations without suffering what it perceives as unreasonable economic harm.[13]

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[12] This policy accords with congressional intent. In originally enacting section 611, Congress intended that the FAA impose "standards which require the full application of noise reduction technology." S. REP. No. 1353, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. CODE CONG. & AD. NEWS 2677, 2690. *See also* Sierra Club v. Costle, 657 F.2d 298, 364 (D.C. Cir. 1981) (holding that the EPA has the authority under the Clean Air Act "to hold the industry to a standard of improved design").

[13] Petitioners Carefree and Airmark also contend that because the FAA has adopted a new "no exemption" policy, it must initiate a new rulemaking proceeding. The FAA does not have a "no exemption" policy—it has granted at least fifteen exemptions from the noise regulations. At any rate, Carefree and Airmark have petitioned the FAA for a rulemaking, and the FAA has yet to act on the petition. Hence, the

For their part, intervenors contend that two pieces of legislation enacted after the FAA promulgated the initial noise rules prove that Congress did not intend the FAA to "exempt four-engine aircraft absent extraordinary and unanticipated circumstances not presented in the cases under review." [14] First, the version of ASNA passed by the Senate included a provision that would have permitted the FAA to grant exemptions for "good cause." [15] The Conference Committee's exclusion of this language, intervenors contend, reflects a congressional intent to preclude the FAA from granting any exemptions. We reject this contention. Had the conferees intended by that deletion to effect a repeal of the FAA's existing authority, they would have expressed that intention in the clearest of terms. *See Watt v. Alaska*, 451 U.S. 259, 267 (1981) repeal by implication is disfavored). Instead, the legis-

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issue is not ripe for adjudication. *See supra* note 25 (addressing similar claims by intervenors Delta and American Airlines).

[14] Brief for Intervenor Transamerica Airlines, Inc. at 32. The intervenors do not speculate what circumstances would warrant exemption under this test.

Intervenor Flying Tiger Line, Inc. ("Tiger") argues that the FAA has no authority whatsoever to grant exemptions to the noise regulations. It claims that the FAA adopted the regulations pursuant to the Aviation Safety and Noise Abatement Act of 1979. The source of the FAA's authority to grant exemptions, section 601(c) of the Federal Aviation Act, refers only to regulations "prescribed under this title," that is, Title VI. *See* 49 U.S.C. § 1421(c) (1982). Since the ASNA legislation is not a part of Title VI, Tiger argues, the exemption power granted by section 601(c) does not reach the regulations promulgated thereunder. This argument is easily disposed of since it is inconsistent with the language of the regulations themselves: the preamble states clearly that "[t]hese amendments are adopted under § 611 of the Federal Aviation Act," 45 F.R. 79,302 (Nov. 28, 1980), that is, under Title VI.

[15] S. 413, 96 Cong., 1st Sess. § 303, 125 CONG. REC. 9181, 9183 (1979).

lative history suggests that the conferees considered the good cause language unnecessary because the FAA already had authority to grant exemptions.[16] Furthermore, the conferees in the Committee Report explicitly urged the FAA to grant exemptions in "hardship situations." [17]

Second, intervenors contend that 1984 legislation granting specific exemptions for Miami and Bangor International Airports [18] proves the lack of FAA general exemption power. Again, the legislative history of the Miami-Bangor legislation reveals that by enacting these specific exemptions, Congress intended to leave the FAA's general exemption authority intact.[19]

We therefore conclude that 1) section 611 does not compel the FAA to grant exemptions from the noise regu-

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[16] *See Aviation Safety and Noise Abatement: Hearings on H.R. 2458, H.R. 3547 and H.R. 3596 before the Subcomm. on Aviation of the House Comm. on Public Works and Transportation*, 96th Cong., 1st Sess. 112-13 (Apr. 24, 1979) (testimony of FAA Administrator Bond) (indicating that "good cause" provision was unnecessary).

[17] H.R. REP. No. 715, 96th Cong., 1st Sess. 23, *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 89, 124, *quoted supra* text at note 4.

[18] In Pub. L. No. 98-473, § 124, 98 Stat. 1837, 1970 (1984), Congress specifically directed the FAA to grant exemptions to those carriers operating at Miami and Bangor International Airports who had entered into hush kit contracts.

[19] *See* 130 CONG. REC. S13047 (daily ed. Oct. 3, 1984) (statement of Senator Baker) ("[I]t is my understanding that the provision temporarily exempting Miami International Airport . . . is in no way intended to inhibit the Secretary of Transportation from granting exemptions in similar situations."); 130 CONG. REC. S14214 (daily ed. Oct. 11, 1984) (statement of Senator Hawkins) ("[N]othing in the exemption we have provided in any way effects [sic] the broad authority the Secretary possesses to grant exemptions from this or any other regulation at other places or under other circumstances from those specified in the amendment.").

tions merely because hush kits are currently commercially unavailable, and 2) neither ASNA nor the Miami-Bangor legislation either expressly or implicitly circumscribes the FAA's authority to grant exemptions under the section 601(c) public interest standard. In short, the FAA has broad discretion to determine whether the public interest would or would not be served by granting noncompliant carriers exemptions from the noise regulations.

B. *The FAA's Exercise of Exemption Authority*

Having established that the FAA has broad authority to grant or deny exemptions, we now consider whether the FAA has exercised that authority in an arbitrary and capricious fashion. Under this familiar standard, "[t]he scope of review . . . is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Manufacturers Ass'n, Inc. v. State Farm Mutual Automobile Insurance Co.*, 103 S. Ct. 2856, 2866 (1983). Deference to agency authority or expertise, however, "is not a license to . . . treat like cases differently." *United States v. Diapulse Corporation*, 748 F.2d 56, 62 (2d Cir. 1984). *See also Local 777, Democratic Union Organizing Committee v. NLRB*, 603 F.2d 862, 872 (D.C. Cir. 1978). As the FAA recognizes, "the agency [has] no choice but to apply the same criteria to all airlines petitioning for exemptions. Any other policy would fly in the face of Congress' intent that air carriers be treated even-handedly." Brief for FAA, *Carefree Vacations*, at 12. We recognize, of course, that "an agency is free to alter its past rulings and practices even in an adjudicatory setting." *Hatch v. FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981). Nevertheless, "it is equally settled that an agency must provide a reasoned explanation for any failure to adhere to its own precedents." *Id.* At the very least, "an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses

over or swerves from prior precedents without discussion it may cross the line from tolerably terse to intolerably mute." *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (citations omitted), *cert. denied*, 403 U.S. 923 (1971). Petitioners and intervenors alike (although with different objectives) contend that the FAA has arbitrarily applied different decisional criteria to similarly situated carriers. We agree.

The FAA's application of the exemption criteria can only be described as grossly inconsistent and patently arbitrary. Elementary even-handedness requires that if all five factors must be met by one petitioner, then all five factors must be met by the next. This has not been the FAA's practice. For example, in an exemption denial issued on December 13, 1984, the FAA unequivocally stated that "all five factors must be met by a petitioner in each case." [20] Yet the "valuable air service" requirement, a factor that the FAA repeatedly asserts on appeal is essential,[21] was not even mentioned in the January 4 grant of an exemption to Ports of Call Travel Club,[22] the December 28 grant of an exemption to Airmark Corporation,[23] or the December 28 grant of an exemption to

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[20] *Rich International Airways, Inc.*, FAA Docket No. 24,231 (Dec. 13, 1984). *See also Skystar International, Inc.*, FAA Docket No. 24,308 (Dec. 28, 1984) ("all five factors mentioned in the report must be considered in each case").

[21] Brief for FAA, *Carefree Vacations*, at 5, 6, 23.

[22] *Ports of Call Travel Club, Inc.*, FAA Docket Nos. 24,055 and 24,357 (Jan. 4, 1985).

[23] *Airmark, Inc.*, FAA Docket No. 23,978 (Dec. 28, 1984). The Airmark order should be compared with a denial of an exemption issued the same day. *See Aeroservicios Ecuatorianos, C.A.*, FAA Docket No. 24,230 (Dec. 28, 1984) ("all five factors mentioned must be considered in each case").

Buffalo Airways.[24] The latter airlines received exemptions in undeniable contravention of the rule that all five factors must be met in each case.[25]

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[24] *Buffalo Airways, Inc.*, FAA Docket No. 24,289 (Dec. 28, 1984). *See also Rich International Airways, Inc.*, FAA Docket No. 24,231 (Jan. 4, 1985) (in granting a partial exemption, FAA did not even mention the value of the service to the public).

[25] The FAA concedes that it no longer takes all five considerations into account. It claims that it has fine tuned the test and no longer considers whether the carrier is small or whether the needed technology is unavailable because all applicants are small and all face the same availability problems. Brief for FAA, *Carefree Vacations*, at 5. That all the applicants face the same availability problems does not mean, however, that the "unavailability of technology" criterion is met in every case. In a December 28, 1984 exemption denial, the FAA stated that since hush kits were "commercially available long ago," the petitioner did not meet the "unavailability of technology" criterion. *Aeroservicios Ecuatorianos*, FAA Docket No. 24,230 (Dec. 28, 1984). If the FAA had consistently applied the *Aeroservicios Ecuatorianos* precedent, perhaps no applicant would ever have qualified for an exemption. The *Aeroservicios* order can be distinguished on other grounds. As we discuss below, however, the FAA no longer requires that the applicant meet both the "financial havoc" and "valuable air service" factors, and it has drastically redefined "good faith." The FAA's dogged insistence that it has done no more than fine tune the test is eloquent proof of the petitioners' claim that the FAA has casually ignored its own precedent. *See* Columbia Broadcasting System, Inc. v. FCC, 454 F.2d 1018, 1026 (D.C. Cir. 1971) ("when an agency decides to reverse its course, it must provide an opinion or analysis indicating that the standard is being changed and not ignored, and assuring that it is faithful and not indifferent to the rule of law").

Intervenors Delta and American seize on this apparent change of policy and urge this court to require the FAA to initiate new rulemaking proceedings. The decision whether to proceed by rulemaking or adjudication, however, is within the sound discretion of the agency. *See* New York State Commission on Cable Television v. FCC, 749 F.2d 804, 815 (D.C. Cir. 1984). Moreover, as noted *supra* note 13, the FAA has yet to act on petitions for rulemaking from Airmark and Carefree.

Another critical inconsistency appears in the FAA's determinations of what constitutes a "good faith compliance effort." Before December 1984, the FAA stated repeatedly that the mere negotiation of a hush kit contract *would not satisfy* the requirement of a good faith effort to comply with the noise regulation.[26] On December 27, however, in denying a reconsideration of Tradewinds' petition, the FAA recognized that the execution of hush kit contracts "does represent *some evidence* of a good faith compliance effort."[27] One day later the FAA concluded that "the situation [had] changed" to the extent that a hush kit contract *conclusively established* good faith. In its *sua sponte* reconsideration of Airmark's petition for exemption, the FAA found "that petitioner has made significant, good faith compliance efforts" by entering into a firm contract to purchase a hush kit.[28] The FAA might argue that circumstances had "gradually" changed between November, when the execution of a hush kit contract did not indicate good faith compliance, December 27, when the execution of a hush kit contract was "some evidence" of good faith compliance, and December 28, when the applicant needed only to execute a hush kit contract to prove good faith. Even this *post hoc* rationalization, however, cannot explain the criteria applied in a December 28 denial of Skystar International's petition for exemption, in which the FAA stated: "the petitioner asserts that it

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[26] *See, e.g., Surinam Airways, Ltd.*, FAA Docket No. 23,987 (Aug. 30, 1984) (although hush kits were being prepared for its noncompliant aircraft, the petitioner's actions did not bespeak "good faith compliance effort"). *But see Caribbean Air Cargo, Ltd.*, FAA Docket No. 24,288 (Nov. 30, 1984) (partial grant of exemption—hush kit contract "strong indication of good faith compliance effort").

[27] *Tradewinds, Inc.*, FAA Docket No. 23,992 (Dec. 27, 1984) (emphasis added).

[28] *Airmark Corporation*, FAA Docket No. 23,978 (Dec. 28, 1984). *See also Arrow Air Inc.*, FAA Docket No. 24,186 (Dec. 28, 1984) (same).

is making a good faith compliance effort by contracting for hush kits for its aircraft. The FAA does not agree." Good faith was destroyed, the FAA reasoned, because "[p]etitioner obtained its aircraft with full knowledge that such aircraft could not be operated at U.S. airports on or after January 1, 1985." [29] By contrast, the FAA found that Airmark, which was granted a partial exemption *the same day*, demonstrated good faith by the execution of a hush kit contract despite the fact it too had purchased its noncompliant aircraft long after the FAA set the January 1, 1985 deadline.[30]

The FAA's exemption shell game is also displayed in its application of the "financial havoc" criterion. Before December 28, 1984, the FAA held that an airline would not meet the "financial havoc" criterion if the havoc was created by the airline's own doing, that is, by the airline's purchase of noncompliant aircraft after the regulations establishing the January 1, 1985 deadline went into effect. For example, in its August 30, 1984 denial of Surinam Airway's petition for exemption, the FAA stated that

> all the information available in this petition indicates that petitioner is now confronting its present difficult situation entirely as a result of its own decision to acquire aircraft that do not meet the noise

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[29] *Skystar International, Inc.*, FAA Docket No. 24,308 (Dec. 28, 1984).

[30] *See also Buffalo Airways, Inc.*, FAA Docket No. 24,289 (Dec. 28, 1984). In *Buffalo*, the FAA granted a partial exemption, stating that the operator's contract for a hush kit established good faith. Buffalo Airways, however, did not even begin operations until January 6, 1984, over seven years after the FAA established the January 1, 1985 deadline. This partial grant should be compared with the December 18, 1984 denial of Airmark's reconsideration, in which the Administrator of the FAA, Donald Eagen, stated "[t]he knowing acquisition of a noncomplying airplane less than 16 months before the compliance deadline does not constitute good faith compliance effort." *Airmark, Inc.*, FAA Docket No. 23,978 (Dec. 18, 1984).

> rule and which cannot now be modified in time to do so. Certainly, those drafting the Conference Report did not intend that financial 'havoc' of a petitioner's own making could justify an exemption.[31]

The FAA did not apply this reasoning, however, in granting Buffalo Airways a partial exemption on December 28, 1984. Buffalo did not even begin operations until 1984; yet, the financial havoc was somehow not of its own choosing, or, if it was of its own choosing, it was nonetheless enough to satisfy the criterion. In some cases, the FAA has ignored the "financial havoc" criterion altogether. In its January 18, 1985 grant of an exemption to Hawaiian Airlines, for example, the FAA did not even discuss whether the refusal of an exemption would result in any financial havoc.[32]

The FAA's arbitrary exemption process is vividly demonstrated in its treatment of the petitions from Tradewinds, Carefree, and, to a lesser extent, Airmark. In its August 9, 1984 denial of Tradewinds' petition, the FAA stated that it would be unfair to compliant operators to grant the exemption.[33] By January 1985, the FAA had found that a significant number of operators had invested the sums necessary to bring their fleets into compliance. Inexplicably, this widespread compliance did not make the unfairness rationale more compelling. Rather, it somehow led the FAA to ignore altogether the unfairness of granting exemptions.[34] In a January 4,

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[31] *Surinam Airways, Inc.*, FAA Docket No. 23,987 (Aug. 30, 1984).

[32] *Hawaiian Airlines, Inc.*, FAA Docket No. 24,326 (Jan. 18, 1985).

[33] *Tradewinds Airways, Ltd.*, FAA Docket No. 23,992 (Aug. 9, 1984).

[34] Instead of explaining how the overall compliance has changed the equities to favor those few which remain noncompliant, the FAA has offered only non sequiturs. In its December 28, 1984 grant of an exemption to Arrow Air, the FAA, citing the overall compliance with the noise regulations, concluded that granting the exemption would be in the public

1985 grant of an exemption to Ports of Call, the FAA, citing the industry's increasing compliance with the noise regulations, stated the broad rule that "those operators which have demonstrated their firm commitment to modifying their aircraft to bring them into compliance, and which, if not granted limited exemptions, would be forced to stop operating, will be permitted to continue operating under certain restrictions until their aircraft can be modified." [35] In granting an exemption to Ports of Call, the FAA took an opposite view of the very considerations that had been fatal to Tradewinds' petition.

The June 5, 1984 denial of Carefree's petition contained the same reasoning found in its Tradewinds order: the grant of an exemption would be unfair to complying carriers, and the financial havoc facing Carefree was of its own doing. Yet, as shown above, in later orders granting exemptions to other operators, the FAA repeatedly ignored those considerations found dispositive in its denial of Carefree's petition.

Airmark, on the other hand, has been in large part a beneficiary of the FAA's inconsistent approach to considering petitions for exemptions. In granting Airmark a partial exemption, the FAA found that Airmark's purchase of a hush kit evidenced good faith, did not consider whether the impending financial havoc was of Airmark's

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interest because it would "generate the income" necessary to bring the petitioner into compliance. *Arrow Air, Inc.*, FAA Docket No. 24,186 (Dec. 28, 1984). The increasing compliance, however, has nothing to do with this new approach. An exemption from the burdensome noise regulations would help any carrier generate revenues, whether the carrier petitioned the FAA before "the situation had changed," as did Tradewinds and Carefree, or after. More significantly, however, because the revenue generation rationale applies to any carrier seeking an exemption from the noise regulations, it cannot meaningfully distinguish among applicants that seek specific exemptions from the general rule.

[35] *Ports of Call Travel Club*, FAA Docket Nos. 24,055 and 24,357 (Jan. 4, 1985).

own doing, and did not measure the value of the air service provided.[36] Airmark contends, however, that the curfew imposed on the exemption is inconsistent with other grants. We agree. Similar restrictions were not imposed on either Buffalo Airways [37] or Icelandair.[38] The FAA has offered no coherent explanation for this disparate treatment.

III. Conclusion

Petitioners contend that they deserve exemptions and ask this court to order the FAA to grant full exemptions until the hush kits are installed on their aircraft. Intervenors would have us affirm the denial of exemptions to Tradewinds and Carefree and reverse the partial grant to Airmark. These requests assume, however, that this court can and must determine the correct exemption criteria that should be applied in these circumstances. It is for the FAA, however, and not this court, to determine the circumstances in which exemptions should be granted or denied. As shown above, the FAA has utterly failed to provide a consistent approach that would allow even a guess as to what the decisional criteria are or should be. As this court recently stated, "we have neither the expertise nor the authority to substitute our judgment for that of the agency and provide an explanation where the agency's path is entirely uncharted." *International Brotherhood of Teamsters v. United States*, 735 F.2d 1525, 1531 (D.C. Cir. 1984). *See also United States v. Diapulse Corp.*, 748 F.2d 56, 62 (2d Cir. 1984).

Accordingly, we vacate the denial of exemptions to Carefree and Tradewinds [39] and the partial grant to Air-

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[36] *Airmark Corp.*, FAA Docket No. 23,978 (Dec. 28, 1984).

[37] *Buffalo Airways, Inc.*, FAA Docket No. 24,289 (Dec. 28, 1984).

[38] *Icelandair*, FAA Docket No. 24,135 (Nov. 20, 1984).

[39] Because we vacate the FAA's denial of Tradewinds' petition, we need not address Tradewinds' argument, unique to

mark. Petitioners shall have thirty days from the issuance of this opinion to reapply for exemptions. The stays currently in force for these petitioners shall be extended for these thirty days. Should the carriers file new petitions within this time period, the FAA shall have a reasonable time to determine whether the carrier should be granted or denied an exemption [40] and the stays will remain in effect until 10 days following the order of the FAA.

We will not prescribe particular criteria for the FAA to apply; the FAA retains broad discretion to determine whether the public interest will be best served by granting or denying petitions. We must insist, however, that the FAA act upon the petitions in a consistent manner and that any deviation from prior rulings be carefully reasoned and fully explained.

So Ordered.

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its status as a foreign carrier, that the FAA has discriminated against it in violation of numerous international agreements. The consistent application of exemption criteria, which we today demand, to foreign and domestic carriers alike, should cure any perceived discriminatory treatment.

Tradewinds also argues that any denial of its exemption petition would contravene international obligations requiring that the United States recognize the "airworthiness" certificates of other signatory countries. Brief for Tradewinds at 69. *See also* 49 U.S.C. § 1502 (1982) (requiring the FAA to exercise authority "consistently with any obligation assumed by the United States in any treaty"). As the FAA correctly notes, however, the noise regulations are not "airworthiness" rules dealing with aircraft safety, but "operating" rules which a country may impose on foreign aircraft.

[40] Under the FAA's regulations governing actions on petitions for exemptions, 14 C.F.R. § 11.27, summaries of the petitions are to be published in the Federal Register, allowing other parties 60 days to file comments in response thereto. The FAA may, however, establish different time periods for "good cause." *Id.*

Congress of the United States
House of Representatives
Washington, D.C. 20515

April 3, 1985

Honorable Elizabeth Dole
Secretary
Department of Transportation
Washington, D.C. 20590

Dear Madam Secretary:

We have previously expressed our concern over the series of last minute exemptions from the four-engine jet noise regulations which were issued by DOT/FAA around the first of the year. In these exemptions, the first of which was issued a few days before the compliance date of January 1, 1985, DOT/FAA suddenly departed from the well-established standards which had been applied in prior cases. The departure from prior standards led to a series of judicial appeals, and on March 29, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in the first three of the pending cases (Airmark v FAA, No. 84-1619, copy attached). In its decision the Court held that by failing to stick with the prior standards DOT/FAA had applied exemption criteria in a manner which "can only be described as grossly inconsistent and patently arbitrary." The court remanded the cases to FAA so that the agency could develop a consistent approach. We are writing to express our views on the approach which should be followed in these remanded cases and in any future cases resulting from remands or further applications.

We believe that the proper approach to noise exemptions is the approach which was followed by FAA until the series of last minute grants beginning on December 28.

The core of the pre-December 28 approach was that an applicant for exemption was required to meet five criteria. This test was developed from the Conference Report on the governing legislation, the Aviation Safety and Noise Abatement Act of 1979 (ASNA), in which Congress stated that exemptions were to be granted only in "emergency situations involving smaller carriers where the carrier is making a good faith compliance effort but needed technology is either delayed or unavailable and rigid adherence to compliance deadlines could work financial havoc and deprive the public of valuable airline service." The five factor test was required until DOT/FAA began the series of grants on December 28. In the granting orders, FAA reduced the five criteria to two and required only good faith compliance efforts and a showing that "financial havoc" would result from a denial of an exemption. Obviously, this change in standards created inconsistencies. As the Court of Appeals pointed out, "Elementary evenhandedness requires that if a full five factors must be met by one petitioner then all five factors must be met by the rest. This has not been the FAA's practice."

We strongly urge DOT/FAA to adhere to the five factor test in considering the cases on remand. This is the directive given by the Congress in ASNA. In addition, we believe that it was highly inequitable to abandon the five factor test at the eleventh hour. Before December 28, the five factor test had been widely publicized and was relied on by the industry. The test was not only set forth in a series of exemption orders, but in addition, the five factor test was further publicized in speeches to industry groups delivered by high ranking DOT officials. (These speeches are cited in Congressman Mineta's letter to you of January 3, which is attached.) As a result, carriers in the industry spent hundreds of millions of dollars in reliance on the five factors test. It was on the basis of this test that some carriers decided to sell, at bargain basement prices, aircraft which could not meet the five criteria. Now, as a result of the loosening of the five factor test, the carriers which purchased these aircraft cheaply have a dual advantage. Not only did they buy the aircraft cheaply, but they also have the ability to continue to operate them after January 1. This is highly unfair to competing carriers which went to the expense of complying.

We further urge that in interpreting each of the five factors you follow the criteria developed in the orders issued before December 28. A number of these interpretations are described in the Court's decision. For example, before December 28 FAA held that, as characterized by the Court, "an airline would not meet the 'financial havoc' criteria if the havoc was created by the airlines own doing, that is, by the airline's purchase of noncomplying aircraft after the regulations establishing the January 1, 1985 deadline went into effect." We urge you to continue to follow these and other pre-December 28 rulings in the remanded cases.

In sum, we urge that in dealing with the three remanded cases and any future cases, you continue to follow the policies which were developed before the inconsistent grant orders beginning on December 28. The pre-December 28 criteria were consistent with Congressional intent and were widely publicized through a series of decisions and speeches by high Department officials. Any loosening or reinterpretation of these standards would not only depart from the governing legislative intent but would be highly unfair to those carriers which relied on the established policies and in making what were often costly business decisions regarding their fleets.

Sincerely,

Nancy Kassebaum

NANCY KASSEBAUM
Chairman
Subcommittee on Aviation
United States Senate

NORMAN Y. MINETA
Chairman
Subcommittee on Aviation
House of Representatives

Attachments

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

MAY - 2 1985

The Honorable Norman Y. Mineta
Chairman, Subcommittee on Aviation
Committee on Public Works and Transportation
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter, co-signed by Chairman Kassebaum, regarding the manner in which the Department of Transportation/Federal Aviation Administration intends to deal with those actions on aircraft noise compliance exemptions which have been remanded to it by the U.S. Court of Appeals.

Following the court's action, all exemptions will be carefully and fully explained. In all cases except those involving essential air service, the five criteria recommended by the Congress in the Conference Report which accompanied the Aviation Safety and Noise Abatement Act of 1979 (Public Law 93-196) are applicable. I have enclosed for your information a recent exemption which describes the criteria to be used by the Department in evaluating new petitions and the operating limitations to be applied in any exemption which may be granted. I believe this exemption is self-explanatory, but I would be pleased to discuss it further with you, if you wish.

I am sending an identical letter to Chairman Kassebaum.

I hope this information is helpful.

Sincerely,

Elizabeth Hanford Dole

Enclosure

Exemption No. 4302

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D. C. 20591

In the Matter of the Petition of	x	
	x	
LINEAS AEREAS DEL CARIBE, S. A.	x	Regulatory Docket
	x	No. 24028-2
for an exemption from Section	x	
91.303 of the Federal Aviation	x	
Regulations	x	

GRANT OF EXEMPTION

By petition dated April 11, 1985, filed by Ms. J. W. Young, Barrett Smith Schapiro & Armstrong, 1201 Pennsylvania Avenue, N. W., Washington, D. C. 20004, on behalf of Lineas Aereas del Caribe, S. A. (hereinafter "LAC"), petitioner requested an exemption from the January 1, 1985 noise level compliance date contained in 14 CFR Part 91, Subpart E, section 91.303.

The provisions of section 91.303 prohibit any person, on or after January 1, 1985, from operating any subsonic turbojet airplane covered by Subpart E to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under 14 CFR Part 36. Petitioner conducts scheduled all-cargo air service, using aircraft that do not comply with the noise level requirements. Under section 91.303, absent an exemption, these aircraft cannot now legally be operated in the United States.

On March 29, 1985, the United States Court of Appeals for the District of Columbia Circuit entered its opinion in Airmark, et al. v. FAA, et al., No. 84-1619, remanding to the FAA certain cases dealing with petitions for exemption from the FAA's aircraft noise compliance rule. In that decision, the Court indicated that the FAA had broad discretion both as to the manner in which it could review newly filed exemption petitions and the criteria to be applied in reviewing such petitions. The Court, on April 5, 1985, issued an order concerning petitioner which required the FAA to show cause why the FAA's January 3, 1985, denial of LAC's previous petition for exemption should not be vacated.

In light of this background, this petition has not been published in the Federal Register because the FAA has determined that it would be contrary to the public interest to delay disposition of this petition pending publication for comment. This grant contains information for petitioners, including petitioners affected by orders entered by the Court of Appeals who are confronted with early deadlines for filing new petitions with the FAA. Due to the imminence of the Court's filing deadlines, the FAA finds that it is in the public interest to make this information available as quickly as possible

to those petitioners affected by the orders of the Court, as well as all others. The FAA has determined, for good cause, that publication in advance in the Federal Register should be waived in this case, only, and to issue the exemption herewith since, as noted below, the FAA finds that this petitioner meets the criteria set forth herein.

General Discussion.

In reviewing this petition and all other petitions, the FAA has determined that two classes of petitions may warrant an exemption from section 91.303. First will be those petitioners who satisfy all five of the criteria set out by the Congress in the Conference Report on the Aviation Safety and Noise Abatement Act (ASNA) (H.R. Rep. No. 715, 96th Cong., 1st Sess. 23, reprinted in 1980 U.S. Code Cong. & Ad. News 115, 124). Second, those petitioners who have been designated in U. S. Department of Transportation (DOT) orders to serve routes determined to be essential service may be eligible for an exemption from the noise rule for service on those routes without regard to whether they otherwise satisfy the five criteria set out by Congress.

I. Congressional Criteria.

As stated previously, the ASNA Conferees indicated that the FAA in reviewing petitions for exemption from the noise rule should give consideration to hardship situations. The Conferees described a hardship situation as being comprised of the following five necessary components all of which must apply in each case:

- smaller carrier
- making a good faith compliance effort
- needed technology delayed or unavailable
- could suffer financial havoc
- performs valuable airline service.

The following is a discussion of the FAA's interpretation of these criteria.

A. The term "smaller carrier" means a carrier which, on January 1, 1985, operated 9 or fewer transport category turbojet aircraft. A "smaller carrier" may also be one which on that date had less than 1500 employees.

These definitions of "smaller carrier" are based upon the FAA's definition of a small entity for purposes of implementing the Regulatory Flexibility Act of 1980 (FAA Order 2100.14, dated July 15, 1983) and the Small Business Administration definition of "small business concern" contained in 15 U.S.C. 632 and in the Small Business Size Regulations promulgated by that Administration on February 9, 1984 (49 Federal Register 5024). Although the FAA and SBA standards were established for purposes other than the aircraft noise rule, they can be used as reliable guidance utilizing available data on industry size.

B. The term "good faith compliance effort" requires that the petitioner have a firm contract entered into no later than March 29, 1985 (the date of the U.S. Court of Appeals decision in the Airmark case), for either hush kits or replacement complying aircraft supported by a non-refundable deposit of at least $75,000 for each affected aircraft, and that the delivery date is the earliest possible date. Exemptions will be limited to aircraft which are the subject of a hush kit or replacement contract. Further, a petitioner may not obtain an exemption for more aircraft than the number of non-compliant aircraft operated by it in the comparable period in 1984, since the purpose of ASNA is to mitigate the noise impact of such aircraft. In addition, if the pertinent contract is for a hush kit, the contract must be with a supplier which had applied for a supplemental type certificate (STC) for the hush kits before January 1, 1985, and is continuing active efforts to obtain the STC. This requirement is necessary to ensure there be a serious likelihood that the non-noise compliant aircraft can be brought into compliance in a reasonable time-frame. Given the general experience of the FAA with the supplemental type certification process and its specific experience with certification of hush kits, any applicants who did not even apply for an STC prior to January 1, 1985, are faced with development efforts requiring a substantial amount of time prior to certification. The clear Congressional intent of ASNA was to place a policy premium on the expeditious delivery of improved noise technology to the market. Allowing later filed STC's to qualify for this criterion would contradict that legislative policy. Thus, to faithfully carry out the Congressional intent, contracts with suppliers who do not fulfill this requirement will not be considered by the FAA as constituting "good faith" compliance efforts for purposes of satisfying this criterion.

C. The FAA has determined that the criterion "needed technology is delayed or unavailable" is essentially met by all petitioners. Those petitioners having aircraft for which the technology to manufacture hush kits was developed in 1973, meet this criterion because the commercial availability of the hush kits has been delayed until recently. Those petitioners that have aircraft for which there are no hush kits currently under development also meet this criterion.

D. In determining whether a petitioner, absent an exemption, could suffer "financial havoc," the FAA will:

1. Presume that, if 20% or more of the petitioner's total operations during the same period in 1984 for which it is seeking an exemption in 1985 would be prohibited, then financial havoc would occur.

2. If, however, a petitioner cannot show that it would lose 20% or more of its total operations, but still believes it will suffer financial havoc if it does not receive an exemption, the FAA will apply the following test to the data submitted by the petitioner:

Using publicly available data for 1984, delete revenue produced by non-compliant U.S. operations which would have been barred by the noise rule and which would not be permitted by any other exemption

held by the petitioner, from the operator's financial database, along with an equal percentage of variable costs. If the resulting figure results in a net loss of greater than 10% of the operator's assets, the FAA will presume that financial havoc exists in that case.

Given the fact that there are significant carrier-by-carrier variations in economic make-up, (i.e. amount of accrued reserves, operating margins, etc.), a single, overall test for financial havoc is inadequate. Rather, the FAA will first apply a presumptive standard (20% of operations) which would reasonably be viewed as resulting in financial havoc if met by a petitioner. However, if an individual carrier fails to meet this presumptive standard, but still believes that its individual situation will result in financial havoc, the carrier may submit particularized information concerning its own profit and loss (10% of assets).

Both the financial havoc tests use historical, publicly available data because such data are sufficiently objective for the FAA to evaluate. Any projections of 1985 operations or financial results would be so subjective that the agency could not adequately determine their validity.

E. In the context of determining eligibility for an exemption from Section 91.303, the criterion "valuable airline service" is met by all petitioners who operated aircraft in charter or scheduled air transportation before January 1, 1985. This date has been used because Congress obviously intended that the service must have been provided prior to the effective date of the prohibition to be deemed "valuable" within the context of the criteria.

II. Essential Air Service (EAS).

Notwithstanding the five criteria explained above, the FAA has determined that carriers which have been designated in DOT orders to perform service on routes which have been designated as EAS routes pursuant to section 419 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1389) warrant special consideration in that maintenance of air service on such routes is, by statute, deemed to be in the public interest. The Congress, in its passage of the Airline Deregulation Act, considered essential air service to be a critical element of the maintenance of air service to small and isolated communities. Despite the primary thrust of the Act to restore competitive incentives to civil aviation, Congress recognized the importance of ensuring that small communities would be given access to the air transportation system, and directed the Board (and now DOT) through section 419 to further:

> ". . .the congressional policy to encourage and foster the continuation of safe and reliable scheduled air transportation for small communities and isolated areas." S. REP. No. 95-631, 95th Cong., 2nd. Sess., 89 (1978).

The FAA also finds that the public interest requires that the objectives of the ASNA and the aircraft noise abatement program established by the FAA, including the aircraft noise operating rule contained in FAR section 91.303, must also be met insofar as possible consistent with continuation of essential air service. Therefore, the FAA will consider that an exemption from section 91.303 for a designated essential air service route is in the public interest if the petitioner shows that it:

- is operating noncomplying aircraft on a route for which it has been found

by a DOT order to be providing essential air service, and

- has a firm contract with a hush kit manufacturer which, before January 1, 1985 applied for an STC; is continuing active efforts to obtain the STC; and such contract is supported by a non-refundable deposit of at least $75,000, for the installation of hush kits on each of its aircraft at the earliest available date, and

- acquired the aircraft for which it seeks an exemption prior to January 1, 1985.

III. Failure of Hush Kit Manufacturers to Obtain STC.

Some hush kit suppliers which applied for STC's prior to January 1, 1985 may be unable, for various reasons, to obtain the STC that is required before their hush kit can be used on aircraft engaged in air commerce. To this end, included among the conditions and limitations contained in each exemption will be a provision which permits exemption holders to obtain substitute contracts if their hush kit suppliers are unable to obtain an STC.

Therefore, the FAA will, without affecting the validity of the exemption, allow exemptions which are based on hush kit contracts that meet the good faith compliance criterion, to obtain substitute contracts if the initial hush kit supplier fails to obtain an STC by September 30, 1985. Those substitute contracts must be with suppliers which have obtained STCs by September 30, 1985, be supported by a non-refundable deposit of at least $75,000, and be for the earliest possible delivery date. If the hush kits from the substitute supplier cannot be installed until after December 31, 1985, these exemption holders will be able to continue operations under their exemptions until the earliest available installation date after December 31, 1985. September 30, 1985, has been selected as the date by which the supplier must have received its STC because that date represents the latest date by which a hush kit purchaser may reasonably expect to obtain delivery positions for its aircraft by December 31, 1985. In addition, based on the information the FAA now has concerning the status of hush kit suppliers which applied for STC's before January 1, 1985, September 30, 1985, is the latest date in calendar year 1985 that a hush kit supplier can expect to have obtained its STC and still have a reasonable expectation of being able to install production hush kits within that year.

IV. General Exemption Provisions.

All exemptions granted by the FAA will include, but not be limited to, the following conditions and limitations:

- Operations allowed under the exemption will be the same number as in the comparable period in 1984,1/ or in the case of essential air service, the

1/ Carriers that engaged in exempted international flights may, in addition, conduct the same number of non-revenue operations for the purpose of refueling that they did last year, at the same locations. This is analogous to the operation of section 124 of Pub. L. 98-473 (the Hawkins-Chiles amendment), pursuant to which exempt carriers en route to Miami are allowed the same number of refueling stops at Bangor that they had in the previous year.

same number of operations for the essential route which was authorized in a previous grant of exemption or, in cases of further DOT orders designating EAS routes, the number of operations needed to meet the EAS requirements.

- All operations except those to Miami International Airport (MIA) and Bangor International Airport (BIA) will be limited to the hours between 0700 and 2200 local time at all airports. The exception for MIA and BIA is based on the Congressional intent evinced in Pub. L. 98-473.

- The FAA will not grant an exemption beyond December 31, 1985, except where the exemption holder has a firm hush kit delivery position after that date, and the hush kit supplier has obtained its STC by September 30, 1985. 2/

- Certain reporting requirements will be required by the FAA to monitor the compliance with the terms of the exemption.

Application of Criteria.

Smaller carrier. The FAA finds that the petitioner meets this criterion because, on January 1, 1985 it operated nine or fewer transport category turbojet aircraft.

Good faith compliance. The FAA finds that petitioner meets this criterion because it has a firm contract, entered into on or before March 29, 1985, for hush kits for the aircraft for which this exemption will be granted. The contract is supported by a non-refundable deposit of at least $75,000. The hush kit supplier applied to the FAA for a supplemental type certificate (STC) for that product before January 1, 1985.

2/ Section 124 of Public Law 98-473 required the Secretary to grant exemptions from the noise rule to certain petitioners for operations to Miami or Bangor International Airports. As mandated by that law, the FAA issued 25 exemptions from Section 91.303 of the Federal Aviation Regulations. Section 124(e) specifically provided that those exemptions shall expire no later than December 31, 1985,

> "except that, if the Secretary determines that equipment to insure compliance with the provisions of Public Law 96-193 which has been certified by the Department for that purpose will not be available to the holder of the exemption by that date, the Secretary may extend such exemption for such period as the Secretary determines is necessary to insure compliance with such provisions."

Accordingly, in evaluating whether a particular exemption granted under authority of Pub. L. 98-473 should be extended beyond December 31, 1985, the FAA will consider whether the exemption holder has a firm hush kit delivery position after that date and whether the hush kit supplier has obtained the necessary certification from the FAA. This provision assures that operators acquire hush kits for their noncomplying aircraft at the earliest possible time and that hush kit suppliers diligently work toward acquiring the STC.

Needed technology is delayed or unavailable. The FAA finds that petitioner meets this criterion because no hush kits for petitioner's aircraft are commercially available.

Financial havoc. The FAA finds that petitioner meets this criterion because more than twenty percent of petitioner's total operations during the same period in 1984 for which it seeks this exemption would be prohibited by the noise rule absent an exemption.

Valuable airline service. The FAA finds that petitioner meets this criterion in that it operated aircraft in charter or scheduled air transportation before January 1, 1985, and continues to do so.

In view of the foregoing matters, the FAA concludes that the petitioner has demonstrated that the public interest requires it be granted an exemption from section 91.303. Therefore, under the authority of sections 313(a), 601(c) and 611(b) of the Federal Aviation Act of 1958, as amended, which has been delegated to me by the Administrator (14 CFR section 11.53), the petition of Lineas Aereas del Caribe, S. A., for exemption from section 91.303 of the Federal Aviation Regulations is hereby granted, subject to the following conditions and limitations:

Conditions and Limitations.

1. This exemption shall apply only to the DC-8-54F aircraft having the following registration and serial number: HK-2632, 45768.

2. A copy of this Grant of Exemption shall be carried on board the above aircraft at all times.

3. This exemption is valid only for the operation of the above aircraft within the United States during the period between the date of this exemption and December 31, 1985, the date by which petitioner states that hush kits will have been installed on its aircraft.

4. This exemption is valid only for the number of operations within the U. S. that petitioner performed between April 1 and December 31, 1984.

5. With respect to the aircraft identified in paragraph 1, above, this exemption is valid only while the "SAI DC-8 Hush Kit Modification Contract" dated January 16, 1985, between Snow Aviation International, Inc. (SAI) and petitioner remains in effect, except that, should SAI fail to receive FAA certification for its hush kits by September 30, 1985, the exemption for the identified aircraft shall remain in effect for a period of sixty days after such failure occurs. If, during the sixty day period, petitioner obtains and submits to FAA a firm substitute contract, supported by a non-refundable deposit of at least $75,000, for installation of hush kits by a hush kit supplier which has obtained its STC by September 30, 1985, then the exemption granted herein shall remain in effect until installation of those hush kits on petitioner's aircraft. In all other cases, this exemption terminates on December 31, 1985.

6. This exemption is valid only while petitioner retains line position number 16 for the hush kits manufactured by SAI.

7. This exemption is valid only as long as petitioner remains the operator of the aircraft described in paragraph 1, above, and shall terminate immediately if petitioner sells, or otherwise disposes of said aircraft while this exemption is in effect.

8. During the period this exemption remains in effect, petitioner shall submit the following reports by an authorized official of the petitioner certifying that they are true and complete (under penalty of 18 USC 1001): (1) not later than May 10, 1985, a report which contains at least the following information: the frequency of operations conducted by the petitioner using noncomplying aircraft at the airports used by petitioner for noncomplying aircraft during each of the twelve months preceding the date of issuance of this exemption; and (2) not later than the tenth day of each month commencing in May, 1985, reports containing at least the following information: (a) the frequency of operations conducted by the petitioner at each airport used by the petitioner for noncomplying aircraft during the preceding calendar month; (b) the registration and serial numbers and the number of operations of each noncomplying aircraft used at the airports reported under (a), above, during such month; (c) the status of petitioner's contract with its hush kit supplier, including particularly whether any change has occurred since the last monthly report in the expected date of installation of the hush kits and, if so, exact details of such change.

9. Except at Miami and Bangor International Airports, this exemption is valid only for landings or takeoffs of the above aircraft between the hours of 0700 and 2200 local time.

Except as provided above, this exemption expires on December 31, 1985, the scheduled date for delivery of the hush kits.

Issued at Washington, D. C. on APR 26 1985

John W. Wesler
Director of Environment and Energy

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Committee on Public Works and Transportation
U.S. House of Representatives
Room 2165, Rayburn House Office Building
Washington, DC 20515
TELEPHONE: AREA CODE 202, 225-4472

May 6, 1985

Honorable Elizabeth Dole
Secretary
Department of Transportation
Washington, D.C. 20590

Dear Elizabeth:

I have written you on a number of occasions to express my concern over the policies followed by DOT/FAA in issuing exemptions from the four-engine jet noise regulations. I have consistently urged that you follow the standards set forth in the Conference Report on the Aviation Safety and Noise Abatement Act of 1979 (ASNA). These standards were in fact followed by FAA until December 28, 1984. Then in a series of last minute exemption grants, FAA began applying more liberal standards. The new standards were challenged in court and the court remanded a number of exemption cases to FAA for further consideration. On April 26, DOT/FAA issued an order establishing exemption standards in one of the remanded cases (Lineas Aereas del Caribe, hereafter LAC). Regrettably, the criteria developed in the LAC case are inconsistent with the criteria established by DOT/FAA in orders issued before December 28. In addition, the new criteria are inconsistent with the intention of the Conference Report on the governing legislation, the Aviation Safety and Noise Abatement Act of 1979.

In these circumstances the Committee has decided that it would be appropriate to consider this problem in-depth in a public forum, and accordingly, we have scheduled oversight hearings for May 22, at which we would like you to testify.

The issues to be considered in the hearing are described in the attached notice. A first issue is why DOT/FAA began changing the criteria for exemptions in some of the cases decided on and after December 28. The pre-December 28 approach was that an applicant for exemption was required to meet five criteria. This test was developed from the Conference Report on the governing legislation, ASNA, in which Congress stated that exemptions were to be granted only in "emergency

situations involving smaller carriers where the carrier is making a good faith compliance effort but needed technology is either delayed or unavailable and rigid adherence to compliance deadlines could work financial havoc and deprive the public of valuable airline service." The five factor test was required until DOT/FAA began the series of grants on December 28. In the granting orders, FAA reduced the five criteria to two and required only good faith compliance efforts and a showing that "financial havoc" would result from a denial of an exemption. Obviously, this change in standards created inconsistencies. As the Court of Appeals pointed out, "Elementary evenhandedness requires that if a full five factors must be met by one petitioner then all five factors must be met by the rest. This has not been the FAA's practice."

At our oversight hearing we would like you to explain the reasons for the decision to reduce the five criteria to two and to change the interpretation of the remaining two criteria. For example, before December 28 the financial havoc criteria was interpreted as requiring that, as explained by the Court of Appeals, "an airline would not meet the 'financial havoc' criteria if the havoc was created by the airline's own doing, that is, by the airline's purchase of noncomplying aircraft after the regulations establishing the January 1, 1985 deadline went into effect." In the post-December 28 criteria, the test of "financial havoc" was changed so that the question of when an aircraft was purchased became irrelevant.

In the LAC exemption order, issued on April 26, further inconsistencies are created. Although the LAC order indicates that DOT/FAA will return to the five criteria, the order goes on to interpret the criteria in a manner inconsistent with the pre-December 28 rulings. Moreover, in the LAC order some of the criteria are interpreted in a manner which deprives them of any real meaning. An example is the new interpretation of the meaning of "valuable air service." Before December 28, when FAA considered whether air service was valuable it considered such issues as whether the service could be provided by other operators or whether the petitioner itself could provide the service with compliant aircraft. The LAC case indicates that these factors will no longer be considered and that the test of valuable air service is met by "all petitioners who operated aircraft in charters or scheduled air transportation before January 1, 1985." And apparently, the exemptions themselves will authorize service to all U.S. points. A carrier will not be limited to the "valuable" service it provided in the past.

The LAC order contains no explanation of this liberalization of the criteria. The new interpretation evades the Congressional intent. If Congress had wanted all air service to be considered "valuable" air service, Congress would not have bothered requiring that the service be found to be "valuable."

At our oversight hearing I would like you to explain the reasons for these and other changes in interpreting the criteria in the LAC order and why you believe that these new interpretations are consistent with Congressional intent.

I hope that through the hearing we can come to a better understanding of the importance of adhering to the noise compliance deadlines and the importance of developing criteria for exemptions which are consistent with Congressional intent.

Thank you for your cooperation. I look forward to your testimony.

Sincerely,

NORMAN Y. MINETA
Chairman
Subcommittee on Aviation

Enclosure

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